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Sentencing Patterns in Cases of Sexual Assault

Report No. 3

Canada

SEXUAL ASSAULT LEGISLATION IN CANADA

AN EVALUATION

Sentencing Patterns in Cases of Sexual Assault

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Julian V. Roberts

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PREFACE AND ACKNOWLEDGMENTS

This report was written in accordance with a contract with the Department of Justice Canada and was submitted to the Research Section in October 1989.

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Finally, I would like to note that although the terms of reference for this project were quite specific, I have taken a more general approach. I have adopted the perspective that sentencing in the area of sexual assault cannot be fully understood without knowing something about other topics such as reporting rates, public opinion and the news media. For those who wish to dispense with this additional material, the sentencing data begin in Chapter 5.

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REPORT HIGHLIGHTS

THE REFORM LEGISLATION IN THE AREA OF SEXUAL ASSAULT

- In 1983 the Canadian law affecting crimes of sexual aggression was modified. The offences of rape, attempted rape, and indecent assault were repealed. The new law created a tripartite classification of sexual assault (s. 271), sexual assault with a weapon, threats to a third party or causing bodily harm (s. 272), and aggravated sexual assault (s. 273). The new maximum penalties are, respectively, 10 years, 14 years and life imprisonment.

AIMS OF THE REPORT

- This report addresses three principal questions in the area:

  (1) What kinds of sentences are imposed?

  (2) How do these sentences compare with dispositions for other crimes of violence?

  (3) How much sentencing variation exists in Canada for sexual assault offences?

  The report draws upon several different databases to present a picture of recent sentencing patterns for the offences of sexual assault. The databases include a computerized information system in British Columbia, recent Department of Justice Canada evaluation research of Bill C-127, as well as earlier sources of data.

  The current state of sentencing statistics in Canada makes it difficult to examine other issues in the area of sentencing offenders convicted of sexual assault.

CHANGES IN NUMBERS OF ASSAULTS REPORTED

- National data from the Canadian Centre for Justice Statistics reveal that since 1983 there has been a steady increase in the numbers of assaults (Sexual Assault I) reported to the police.

  There appears to be no change or even a decline in the reports classified at the two higher levels of sexual assault. In 1985 there were 453 reports of aggravated sexual assault recorded by the police; by 1988 this figure had declined 22 per cent to 370. Finally, the increase in reports of sexual assaults far exceeds the increase in nonsexual assaults reported.

- The most likely explanation for this increase in reporting rates is that victims' attitudes towards the criminal justice system have changed, making them more likely to come forward.

PUBLIC OPINION AND NEWS MEDIA COVERAGE OF SEXUAL ASSAULT SENTENCING

- Since 1983, a great deal of public and professional concern has arisen over the sentences imposed for the new crimes of sexual assault.
- Much of the criticism from members of the public concerns the perceived leniency of sentencing trends.
- News media coverage of sexual assault focuses upon cases resulting in atypically lenient sentences.
- There appears to be a discrepancy between the typical case of sexual assault as reported to the police and public views of what constitutes the average case of sexual assault. To most people, sexual assault is synonymous with the earlier offence of rape.

  Although the public may regard sexual assault as rape renamed, sexual assault in fact includes a range of behaviours varying in seriousness from acts that used to be classified as indecent assault to rape.

CLASSIFICATIONS OF SEXUAL ASSAULT

- Almost all (95 per cent) sexual assaults reported to the police are classified at the first (lowest) level of seriousness.

SENTENCES IMPOSED FOR SEXUAL ASSAULT CONVICTIONS

- For the period covered in this study, most convictions for Sexual Assault I, (between 60 per cent and 80 per cent) resulted in the imposition of a period of imprisonment.
- Incarceration was the disposition imposed in more than 90 per cent of convictions for sexual assault with a weapon. For convictions for aggravated sexual assault, almost every offender convicted was incarcerated.
- This incarceration rate emerges from the databases examined in this study. It is not drawn from a nation-wide survey of sentencing patterns. Truly national data are not available at the present time.
- Using the percentage of offenders incarcerated as the index of comparison, Sexual Assault II and III were punished more severely than other personal injury offences.
- Sexual Assault (particularly level I) appears to be an offence that generates a fair amount of sentencing variation across jurisdictions in Canada. This result emerges from several different databases investigated in this study.

1.0 INTRODUCTION

The law and practice of sentencing is highly significant for a number of reasons. Many accused persons plead guilty. The sentencing process is therefore their main contact with the judicial part of the criminal justice process. On a practical level, after the exercise of police and prosecutorial discretion, sentencing decisions will reveal the most about the reality of the law on sexual assault.

-- Christine Boyle (1984, p. 171)

A discussion about law reform relating to sexual offences would be incomplete without considering the sentencing of persons convicted of sexual assault.

-- Law Reform Commission of Canada (1978, p. 43)

1.1 Terms of Reference

According to contract number 19081-9C047, the terms of reference were as follows:

To the extent possible and where data permit, the contractor will, within the scope of this research project, address the following questions:

1. What sentences are imposed for Sexual Assault I, II and III across the country?
2. How much variation exists from region to region?
3. How do sentences compare with those imposed prior to 1983?

The purpose, then, of this report is to provide a description and analysis of sentencing patterns for the crimes of sexual assault in Canada.

1.2 Reform of Canada's Sexual Assault Laws

On August 4, 1982, Bill C-127 was passed in the House of Commons and on January 1, 1983 became law. As of that date, fundamental changes were introduced into the Criminal Code of Canada. The major reform was the replacement of the offences of rape, attempted rape and indecent assault with a new tripartite classification of sexual assault. In this respect, Canada was not alone; reforms to the rape laws in several other jurisdictions had taken place at approximately the same time. In some, the reforms were quite similar to those in Canada. For example, in Michigan, the categories of sexual offences were replaced with three new offences. The new sexual assault law in Canada closely mirrors the three-tiered structure of the assault offences defined in the Criminal Code. It consists of sexual assault (s. 271) the least serious level, which is a hybrid offence; it carries a maximum penalty of 10 years' imprisonment if resulting from an indictable conviction (and six months' imprisonment on summary conviction). This corresponds to the first level of the assault legislation, with a maximum penalty of five years' imprisonment. The second level is sexual assault involving a weapon, bodily harm or threats to a third party (s. 272) and carries a maximum penalty of 14 years' imprisonment. This corresponds to the offence of assault with a weapon or causing bodily harm (with a maximum of 10 years). The most serious level of sexual assault is aggravated sexual assault involving wounding, maiming, disfiguring or endangering life. It carries the most severe penalty in the Criminal Code, namely life imprisonment. This level corresponds to the third level of nonsexual assault, aggravated assault (maximum penalty: 14 years). The exact wording of the sexual assault offences from the Criminal Code is as follows:

Sexual Assault

271. (1) Every one who commits a sexual assault is guilty of (a) an indictable offence and is liable to imprisonment for a term not exceeding 10 years; or (b) an offence punishable on summary conviction.

Sexual Assault with a weapon, threats to a third party or causing bodily harm

272. Every one who, in committing a sexual assault,

(a) carries, uses or threatens to use a weapon or an imitation thereof,

(b) threatens to cause bodily harm to a person other than the complainant,

(c) causes bodily harm to the complainant, or

(d) is a party to the offence with any other person, is guilty of an indictable offence and liable to imprisonment for a term not exceeding 14 years.

Aggravated Sexual Assault

273.1 (1) Every one commits an aggravated sexual assault who, in committing a sexual assault, wounds, maims disfigures or endangers the life of the complainant.

(2) Every one who commits an aggravated sexual assault is guilty of an indictable offence and is liable to imprisonment for life.

(Throughout this report, for the sake of brevity, these three levels will be referred to as Sexual Assault I, II and III.)

While the structure of the new sexual assault legislation reflects the structure of the assault laws, the maximum penalties are considerably higher for sexual assault. As Laureen Snider (1985) points out, they resulted from amendments introduced by the Minister of Justice at the time. The revised, higher penalties were not a consequence of pressure from women's groups, but rather from senior law enforcement officials:

> It came out that private meetings had been held with senior law enforcement personnel before the Committee hearings even began. Heavier penalties were introduced because, in Chretien's words, the state agencies' representatives felt "that I was perhaps a little too liberal" (Snider, 1985; p. 345).

Smart (1989) also makes the point that the high maximum penalties were not endorsed by feminist writers, who argued that punishments would become less certain if made more severe. (This view has been sustained by the empirical research on sentencing.)

Sexual assault -- and the penalties prescribed in the Criminal Code -- also gives rise to a great deal of concern among members of the general public. The issue of public opinion will be explored later in Chapter 3. For the present, it is simply worth noting that when the public thinks of problems in the area of sentencing, it often thinks of offences of violence, particularly sexual violence (Environics Research Group, 1989). The reason for this is simple: the news media pay a great deal of attention to certain cases of sexual assault. As well, recent criminal justice reports -- such as the report of the Standing Committee on Justice and the Solicitor General (Daubney, 1988) -- have paid particular attention to the sentencing of offenders convicted of sexual assault. In short, sentencing issues relating to the crime of sexual assault have been the object of intense professional and public scrutiny in recent years.

Finally, Canada is not the only country in which a great deal of professional and public concern exists over the crime and punishment of sexual assault. The situation is comparable elsewhere, as is made clear in Temkin's description of the criminal justice response to rape in the United Kingdom.

> In the 1980s, the plight of the rape victim in this country remains as acute as ever. She continues to be viewed in court and out of it with suspicion and hostility and facilities to assist her are few and far between. The low reporting and high attrition rate of rape offences are to be expected in this context...The new sentencing guidelines should encourage judges to view rape more seriously, but tougher sentences, without reform of any other kind, may increase rather than reduce the complainant's ordeal in court (Temkin, 1985; p. 23-24).

The 1983 amendments were the government's response to widespread criticism of the manner in which the criminal justice system handled sexual offences. (See, for example, Clark and Lewis, 1977). Approximately three years after these amen dments were made, the Department of Justice Canada commissioned an ambitious series of evaluation studies to examine the impact of the new legislation upon the treatment of offences of sexual assault (Begin, 1987).[1] In the course of gathering data from a number of sites across Canada, the researchers also collected some sentencing statistics. The focus of these evaluation reports was not on sentencing but rather upon issues relating to the processing of sexual assault cases.

The current report addresses sentencing-related issues in the area of sexual assault. In order to accomplish this, several issues of relevance to sentencing will also be explored. These include the changes in reporting of sexual assault that have taken place since 1983, and public views of sentencing in the area of sexual assault.

---

[1] These reports provide data on sexual assault cases from several sites across Canada. They can be obtained by contacting the Research Section of the Department of Justice Canada. They are listed in Appendix B and constitute a part of the Department of Justice Canada sexual assault evaluation.

Specific reference was made in one of the Department of Justice Canada evaluation studies to the necessity of having a report of sentencing practices and trends in this area. The authors of a survey of front-line agencies stated the following:

> Nowhere is there a nation-wide, systematic statistical study of changes in sentencing patterns. This would be a fairly large study, but it could be done entirely from court files, law journals, and other documentary evidence. We believe there is a problem in sentencing patterns not reflecting the intent of the government to increase humane treatment to the survivor and just treatment to the assailant, and we recommend that such a study be undertaken in the near future (CS/RESORS Consulting, 1988; p. 71).

The idea of a systematic, reliable comparison of sentences before and after the change in legislation is but a chimera, given the current state of sentencing statistics in Canada. Nevertheless, certain questions can be addressed and answered with empirical data, and that is one of the aims of the present report.

In an ideal world, many questions relating to sentencing would be answerable by reference to annual statistical compilations of data. For example, in order to know whether a great deal of cross-jurisdictional disparity existed, one could simply examine sentencing patterns in different provinces or territories. Unfortunately, sentencing statistics have not been routinely collected and published in Canada since 1971. (In the future, such data should be available through the Adult Criminal Court Survey.) Thus, at any given time it is impossible to know what the average sentence across Canada for sexual assault is, or whether the average varies substantially from province to province. The only way we can find out about sentencing patterns for convictions of sexual assault (or any other offence for that matter) is to examine data from special one-shot studies such as those recently commissioned by the Department of Justice Canada (e.g., Hann and Kopelman, 1987 -- see Chapter 7).

This report presents some of the more recent systematic sentencing data in cases of sexual assault. But it must be understood from the outset that since this report draws upon secondary data sources, the picture of sentencing patterns must be somewhat imprecise. Moreover, it was not possible to collect information on sentencing systematically derived from all jurisdictions across Canada at the same time. Instead, this report draws upon a series of studies, including the recent sexual assault legislation evaluation research, to present a composite image of sentencing trends. Like most composite pictures, while conveying a great deal of information, it is nevertheless not a perfect likeness.

1.3 Sentencing Statistics in Canada

Sentencing statistics fall into one of two overlapping categories: those that are desirable and those that are available. This report relies upon the latter. Unfortunately for contemporary criminal justice researchers in Canada, the data that are desirable are not available; those that are available leave a lot to be desired. The result is that many important questions must for the present remain unanswered.

Desirable sentencing statistics would permit researchers to answer complex questions pertaining to the sentencing process. For example, what effect does a criminal record have? How do factors relating to the offender interact with factors relating to the commission of the offence? To what degree do extra-legal factors such as ethnicity influence sentence length? To answer questions of this nature, we would need to record many different sentencing-related statistics, viz., offender characteristics (race, age, employment status, social class, previous criminal history etc.); offence characteristics (degree of harm, amount stolen, etc.) and characteristics associated with the criminal justice system (plea, court level, characteristics of the judge, etc.). Sentencing statistics involve more than the simple association of a particular sanction with a Criminal Code offence section. Unfortunately, at the present we do not have anything like the necessary richness of sentencing data to provide definitive answers to complex questions. We cannot, for example, define with any precision the special problems confronting the sentencing of native offenders. (See LaPrairie, 1989, for an analysis of this issue.)

This said, the statistics that are available can answer some fundamental questions. That is the purpose of this report: to present the available data, most of which are scattered across many different sources (some unpublished) with a view to informing the reader about recent sentencing practices for sexual assault offences.

1.4 Aims of the Report

This report aims then to address selected issues in the area of the sentencing of sexual assault cases. The nature of those issues is in large degree dictated by the data at the researcher's disposal. Thus, for example, it is not possible to examine the relative importance of different aggravating/mitigating factors given the essentially statistical data. (For a discussion of this topic, see Boyle, 1984; Ellis, 1989; Marshall, 1987.) More sophisticated analyses of sentencing issues in sexual assault await the arrival of comprehensive sentencing statistics.

It should be noted that this paper does not examine the case law on sentencing (see Boyle, 1984). Instead, it is an attempt to examine the sentences imposed for the three levels of sexual assault created by the new legislation. As well, other empirical issues relating to sentencing practices in sexual assault cases will be explored (such as sentencing disparity). As will be seen, the absence of systematic sentencing data for the period immediately preceding the introduction of the new law prevents direct comparisons with the past in terms of sentencing practices. Some limited pre and post comparisons will be made, however, using data derived from the Department of Justice Canada evaluation reports.

1.5 Format of the Report

Three kinds of statistics are presented: (a) descriptive -- what kinds of dispositions are imposed for sexual assault? (b) analytic -- how much sentencing variation exists? and (c) comparative: how do sentencing patterns for sexual assault compare with sentencing patterns for other offences against the person?

Chapter 2 presents national statistics on the incidence of reporting of sexual offences over the past decade. Chapter 3 deals with the issue of public attitudes towards the crime and punishment of sexual assault. In Chapter 4 we examine the research on Sexual Assault I in an attempt to understand the kinds of behaviours resulting in convictions for these crimes. The next three chapters (5,6,7) describe the sentencing trends emerging from several different databases. Chapter 8 presents a brief discussion of the findings, and the report concludes with a bibliography and an appendix.

2.0 THE EMPIRICAL AND LEGAL CONTEXT OF SEXUAL ASSAULT

No legal reform can be understood in a vacuum
-- Loh (1980)

2.1 Incidence of Sexual Assault Reports in Canada

Reporting statistics include all reports made to the police by a member of the public. When someone notifies the police that a crime has been committed, it is recorded as a reported offence. A small number of these reports will thereafter be classified, following a preliminary investigation by the police, as unfounded.

The sexual assault evaluation studies commissioned by the Department of Justice Canada shed little light upon the question of reporting rates. Generally speaking, they were designed to address other issues relating primarily to the processing of sexual assault cases in the criminal justice system. As the authors of the British Columbia evaluation note: "In this report, we have no evidence to offer on the subject of reporting rates" (EKOS Research Associates, 1988a; p. 48). It is worth noting, though, that those evaluation studies that do deal with the question of reporting rates suggest that they have increased. For example, the Alberta evaluation report states:

> The number of sexual assault cases reported to the police is increasing. Police suggested that victims are more willing to report; this was seen as being due partly to the existence of support groups like the Sexual Assault Centre, and partly to the new openness about sexuality (University of Manitoba Research, 1988b; p. 69).

The Hamilton-Wentworth site report notes a 39 per cent increase:

> This increase is far in excess of what could have been expected on the basis of net population growth in Hamilton-Wentworth over the three year time period. It is also implausible to assume that the increase in reports is due to an increase in the actual number of sexual assaults taking place in Hamilton-Wentworth. It appears, then, that the increase stems from heightened reporting rates (EKOS Research Associates, 1988b; p. 72).

Addressing the question of changes in reporting rates on the basis of a few select sites is far from ideal. Accordingly, we shall turn to a national database on incidents that were reported to the police. Renner and Sahjpaul (1986) provide reporting data for the transition year (1983) but not beyond. They note, however, that the 1983 total of sexual assaults (13,851) was significantly higher than the average of the preceding 10 years (11,060). The present paper will use reporting rates corrected for population growth. Data on the reporting of sexual assault are provided by the annual publications of the Canadian Centre for Justice Statistics (1976 - 1988). The term "crime rate" signifies the number of cases of sexual assault reported to the police per 100,000 adult population.

Sexual assault, like other personal injury offences, is underreported. Estimates vary, but it is well established that fewer than one half of all incidents of sexual assault are reported to police. The Canadian Urban Victimization Survey found that 39 per cent of victims of sexual assault reported the incident to the police (Solicitor General Canada, 1985). Therefore, to speak of the crime rate for sexual assault based upon criminal justice statistics is to discuss only the incidence of reported assaults.

One of the reasons that victims fail to report sexual assaults is that they perceive the criminal justice system to be ineffective in dealing with such crimes. The 1983 legislation specifically aimed to increase public confidence in the system's ability to respond to the needs of the victim. This was attempted by various means, including changes to the law of evidence. If the reform legislation has had a positive effect, this should manifest itself in an increase in the number of assaults reported. A major interest then for researchers concerns the reporting rates for the three levels of sexual assault.

But the statistics for sexual assault alone cannot tell all; we need comparative data. It is possible that the crime rates for **all** offences have increased over the period in question. Accordingly, the crime rates for the three levels of sexual assault have been extracted and compared with the rates for the three levels of nonsexual assault. The rates per 100,000 are presented in Table 1. It is apparent that there has been an increase in the reporting of Sexual Assault I over and above the increase in reporting of nonsexual assaults for the period in question (1983 - 1988). In fact, there has been a substantial increase for sexual assault compared with the corresponding increase for assault.

Table 1 Reporting Rates[1], Canada, Selected Offences (1983 - 1988)[2]

OFFENCE	YEAR						% increase[3] 1983-1988
	1983	1984	1985	1986	1987	1988	
Sexual Assault							
Level I	42	54	67	75	82	91	126
Level II	3	3	3	4	4	4	13
Level III	2	2	2	2	2	1	-39
Assault							
Level I	331	366	398	437	483	501	59
Level II	98	105	107	113	117	120	27
Level III	14	12	10	11	10	11	-20

Notes to Table:

[1] Rate per 100,000 population (Actual offences rather than total reports - see CCJS publications)

[2] Source: Canadian Centre for Justice Statistics (Canadian Crime Statistics 1983 - 1988)

[3] The percentages are based upon the actual number of reports, rather than the rate, in order to avoid distortions due to the rounding of rates.

This table also raises an issue worthy of further research. It can be seen that the reporting rate for aggravated sexual assault has actually **declined** over the past few years. The rate per 100,000 population is not very informative, but if we examine the actual number of offences in this category, the trend is clear. The latest edition (1988) of the Canadian Crime Statistics Annual reveals that there were 370 cases of aggravated sexual assault recorded in 1988. This is a

10 per cent decline over the previous year when 412 incidents were recorded. In 1986 there were still more (429) and in 1985 the figure was higher still (453). This represents an almost 20 per cent decrease over a three year period, when the population was increasing as was the number of reports of Sexual Assault I: in 1985 there were 16,990 level I sexual assaults, compared with 23,549 in 1988. These are numbers of actual offences and are lower than the numbers of reports made.

Why there should be a substantial increase in the number of Sexual Assault I reports and little change or even a decline in reports of the higher (more serious) levels is unclear. It may well represent a change in charging practices by police officers or by crown counsel across the country rather than a change in the pattern of offending or reporting. An analogy exists in the area of homicide. After the legislation changed in the late seventies, an increase in first degree murder statistics was reported. This reflected a change in charging practices rather than an increase in one form of murder relative to another. A similar shift may have occurred in the area of sexual assault. As well, deciding at which level of sexual assault it is appropriate to lay a charge may not be easy.

Before concluding that there has been an increase in the reporting of sexual assault, it is necessary to examine the possibility that there has been a continual increase in the reporting rate beginning some time before the legislative intervention.

Analysis of the number of reported rapes in Michigan demonstrated a discernible increase after the introduction of the Criminal Sexual Conduct reform statute. Upon closer examination, however, it became clear that the increase in reporting had begun even earlier, and was not correlated with the legislative reform (see Marsh, Geist and Caplan, 1982.) Table 2 presents Canadian data for the earlier crimes of rape, attempted rape, indecent assault (female) and indecent assault (male) for seven years prior to 1983. These are the offences that are now subsumed under the tripartite sexual assault classification. The reader should be aware, however, that the rape and attempted rape offences that were contained in the Code prior to 1983 do not correspond exactly to any of the three levels of sexual assault. Comparisons between the two offence types are, therefore, difficult, whether the dependent measure is the reporting rate or the eventual disposition.

Table 2 Reporting Rates[1], Canada, Sexual Offences (1976 - 1982)[2]

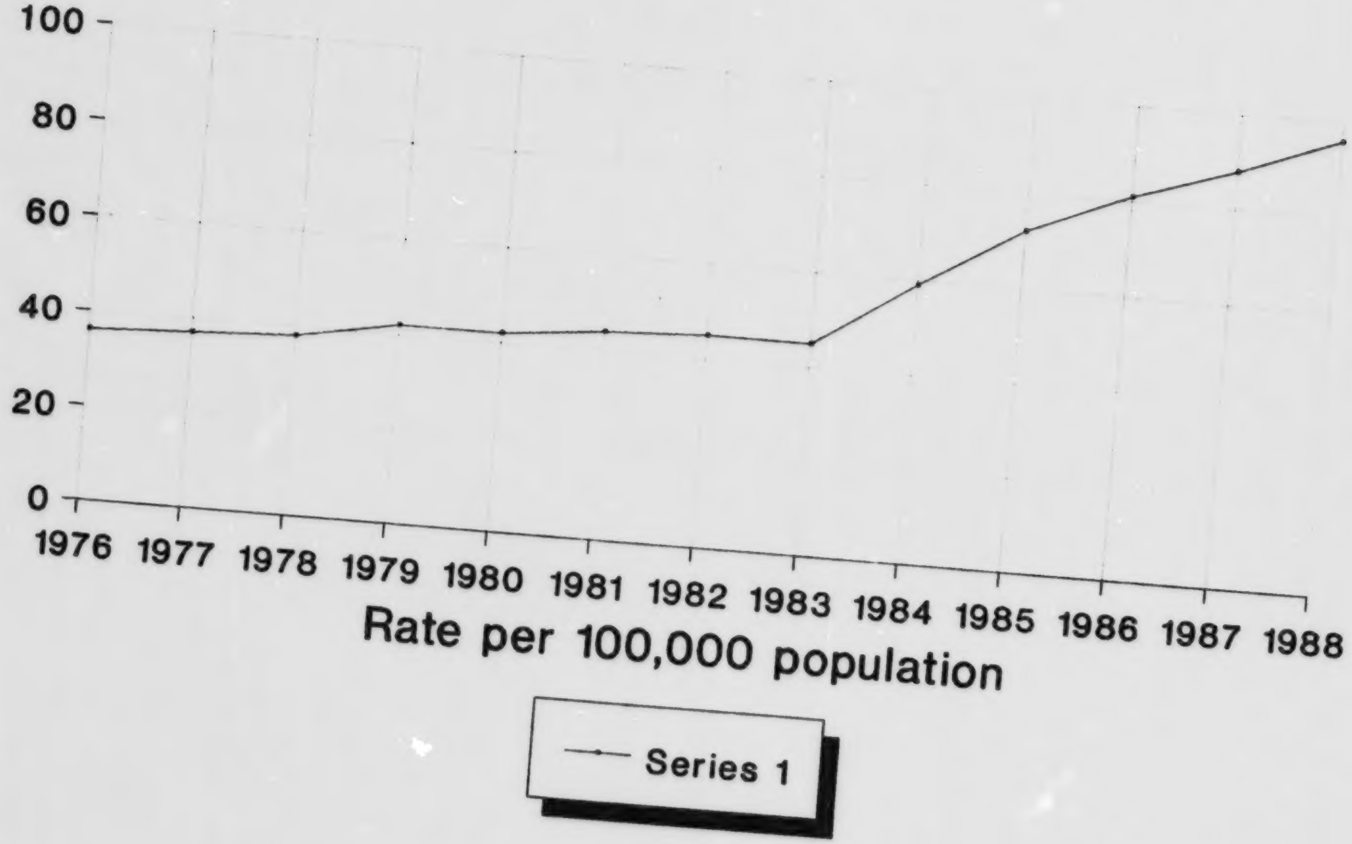
OFFENCE	YEAR							
	1976	1977	1978	1979	1980	1981	1982	% increase[4] (1976-82)
Rape[3]								
Indecent Assault (F)	8	8	9	10	10	11	10	25
Indecent Assault (M)	23	23	24	26	27	28	29	26
Total Sex Offences	5	6	5	6	5	5	6	20
Nonsexual Assaults[5]	454	446	453	477	490	501	511	13

Notes to Table:

1 Rate per 100,000 population
2 Source: Canadian Centre for Justice Statistics (Canadian Crime Statistics, 1976 - 1983)
3 Includes attempted rape
4 Percentage change is based upon the number of incidents in order to avoided distortions due to rounding of numbers.
5 For example, wounding, causing bodily harm, assaulting police officer.

These data show remarkable stability over the seven year period: there was a steady but relatively modest increase from 1976 to 1983. It does not seem to be the case that the marked increase in reports from 1983 to 1988 began earlier. This strongly suggests that the new law has had an impact upon the behaviour of sexual assault victims. The crime rate data are presented in Figure 1. This figure presents crime rates for sexual offences over a 12 year period, 1976 to 1988. For the period 1976 to 1982 the data are composed of all assaultive sexual offences, including rape, indecent assault male and indecent assault female. These are the offences that after 1983 were classified as one of three levels of sexual assault. For the later post amendment period (1983 to 1988) the data are composed of Sexual Assault I, II and III.

Figure 1 Reports of Assaultive Sexual Offences 1976 - 1988



Having described the new sexual assault offences as differing in many important respects from the earlier crimes of rape and indecent assault, a word of explanation is in order before presenting a graph that compares directly the reports of these crimes prior to 1983 with reports since the reform. We are interested in this graph to know whether **the overall incidence of nonconsensual sexual offences** reported to the police has changed. While it would be inappropriate to compare, for example, the reporting rate for Sexual Assault I in 1984 with the reporting rate for rape in 1982 (because of the very different nature of the crimes) **we are concerned here with the total volume of offences rather than distribution of individual offences.** Although we cannot say that all the incidents formerly classified as rape are now classified as Sexual Assault I, we can say, with reasonable precision, that incidents formerly classified as rape or indecent assault now fall within the definition of sexual assault.

These data are light on the general incidence of assaultive sexual offences over the period 1976 to 1988. The trend line shows that there has been a dramatic increase in the incidence of Sexual Assault I reported to the police, and that this increase is associated with the change in the law. These data do not reveal whether the incidence has actually increased, or whether there has simply been an increase in reporting. These data only speak to reported cases. It is important to answer this latter question, for one of the aims of the reform legislation was to increase the likelihood that victims will report crimes.

Another source of data confirms the rise in reporting rates and attitudes of personnel working in front line agencies (police based victim/witness assistance programs (PV/WA) and sexual assault centres (SAC)). The experience of personnel working in these agencies supports the view that the reporting rate has, in fact, increased. The report states:

> The agencies were then asked if they thought there had been a change in the numbers of survivors reporting assaults to the police over the last few years. With the exception of the hospitals, there was a consensus that reporting among sexual assault survivors seems to be increasing. Twenty-one (70 per cent) of the 30 SAC's that responded and 14 (74 per cent) of the 19 PV/WA's that responded agreed that there had been an increase in survivors reporting to the police (CS/RESORS Consulting, 1988; p. 34)

There was less consensus among personnel as to the reason for the increase in reporting. Fewer than one half of the SAC respondents attributed the increase to changes brought about by the new legislation. Increased public awareness and media attention were identified by most respondents as causing the increase in reporting. Clearly, though, these may have been triggered by the change in law. In a later chapter, we shall discuss the problems surrounding the interpretation of cause and effect in the area of criminal justice. One difficulty is that several changes take place simultaneously. Accordingly, in the present context, several factors could explain the rise in reports recorded by the police.

One factor could be an increase in awareness of the crime of sexual assault; victims are more likely to come forward when the topic is not hidden from public view: we have had several illustrations of this tendency in recent years. Another possibility is that personnel in front-line agencies have greater confidence in the system, and this is conveyed to victims, a greater proportion of whom then report to the police.

2.2 Competing Explanations for the Increase in Reporting of Sexual Assault Since 1983

The critical question then is the following: Has there been an increase in the incidence of sexual assault? This seems unlikely, given the abrupt nature of the rise in reporting in 1983. What then is responsible for the increase? Several alternative explanations will now be examined.

(i) Change in police behaviour

It is possible that the number of reports to the police has remained relatively constant since 1983, but that the police have, since the change in law, displayed a greater reluctance to dismiss reports or classify them as unfounded. This would also result in a rise in the reports recorded in the national crime statistics database. This explanation can be discarded for several reasons. The first reason is that the unfounded rate has not changed much since 1983; the explanation suggested above would require the rise in reporting to be matched by a decline in the percentage of cases declared unfounded. This has not occurred. Moreover, the evidence from the Department of Justice Canada Bill C-127 evaluation studies suggests that there has been little change in police behaviour from 1982 to the present. Baril, Bettez and Viau (1989) note:

> Les pratiques policères semblent avoir peu changé entre les deux périodes à l'étude." and further: "les policiers utilisent peu leur pouvoir discrétionnaire dans leurs décisions de procéder ou non a l'enquête et d'acheminer une dénonciation (p. 81)[2].

Finally, there are strong pressures upon the police to clear crimes. Increasing the number of reports accepted as founded would have the inevitable effect of decreasing the clearance rate, for some of the incidents previously rendered unfounded would have been classified in that category based on the perception that the incident would be hard to clear by charge.

(ii) Change in behaviours included in the legal definition of sexual aggression

Another possible alternative explanation of the rise in reports to the police concerns the kinds of acts reported. One of the aims of the 1983 legislation was to incorporate more nonconsensual sexual activities in the sexual assault legislation than had been included in the earlier law. The reform legislation now permits the laying of a charge of sexual assault against the husband of the victim. As well, the crime of sexual assault can be committed by a woman as well as a man. However, examination of the patterns of offending uncovered in Department of Justice Canada studies shows that this cannot possibly account for the substantial rise in reports after 1983. The number of cases in which the accused was either a woman or the husband of the victim is small. For example, the Hamilton-Wentworth evaluation found that the number of reports in which the victim (the complainant) was a current or ex-spouse (or a common law partner) was only three per cent. Moreover, there has not been a substantial increase in the proportion of male complainants. In Alberta, for example, the percentage of complainants who were male rose slightly, but the increase was not statistically significant (University of Manitoba; 1988b; Table 23, p. 43). Similar trends emerge elsewhere. Nor is it the case that there has been a change in classification of the other sexual offences (e.g., incest) that could account for the increase. The proportion of all sexual offences accounted for by the assaultive sexual offences has generally remained constant.

This is clear from data presented in the Lethbridge, Alberta evaluation report (University of Manitoba, 1988b). In the prereform period the offences of rape, attempted rape and indecent assault accounted for **87.4 per cent** of all offences involving sexual aggression. In the post reform period, the three levels of sexual assault accounted for **87.5 per cent** of all offences (see Table 1, p. 26). Similar results emerge from the Manitoba site. Prior to the change in the law, the four offences of rape, attempted rape and indecent assault (male and female) accounted for **91.3 per cent** of the offences. After the introduction of the reform legislation the sexual assault tripartite classification accounts for almost the same percentage of cases: **88 per cent** (University of Manitoba, 1988a; p. 31). The explanation for the rise in reports of sexual assault must lie elsewhere.

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[2] Police practices appear to have changed little over the period covered by this study. "The police do not exercise their discretion to a great degree when deciding to pursue or drop an inquiry or to lay a charge."

(iii) Changes in public definitions of sexual aggression

It might be argued that certain acts, that before 1983 were not brought to the attention of the police, are now being reported as sexual assault. These acts might include some of the less serious forms of sexual assault. Prior to 1983, victims might not have seen them as indecent assault. After 1983, however, victims have a different perception: now they see such activities as constituting a crime defined by the Criminal Code. In this respect, the new legislation has had a criminalizing effect: acts that may well have been included in the old definition as indecent assault but which were not perceived as such by victims are now being reported. This explanation is hard to sustain or discount; it may in fact be responsible for part of the increase in reporting rates. However, examination of the Department of Justice Canada evaluation research shows that it cannot explain more than a modest increase in reports. The reason is that the kinds of acts now being reported as sexual assault do not differ greatly from the acts that previously were reported as indecent assault (male or female), rape or attempted rape.

(iv) Changes to the scope of behaviours included in the legal definition

Another possibility is that the sexual assault legislation is attracting offences formerly classified as something other than rape or indecent assault. It is possible that cases classified as incest prior to 1983 are now being charged as Sexual Assault I. If this were the case, we would expect a decline, or more plausibly, no increase in the incest statistics. This is not the case. Between 1987 and 1988, there was a nine per cent increase in the number of incidents classified as "other sexual offences" by Statistics Canada (Statistics Canada, 1987, 1988; Table 2). The following offences are included in this category: sexual interference (s. 151); invitation to sexual touching (s. 152); sexual exploitation (s. 153); incest (s. 155); anal intercourse (s. 159); bestiality (s. 160).

(v) Relationship between sexual assault and child sexual abuse

Finally, it is necessary to deal with a potential explanation that includes several elements. What percentage of the reports of sexual assault involve acts that were formerly classified as one of the sexual offences against minors? The Criminal Code contains a number of sexual offences against children. For example, section 151 defines sexual interference in the following way:

> **Every person who, for a sexual purpose, touches, directly or indirectly, with a part of the body or with an object, any part of the body of a person under the age of fourteen years is guilty of an indictable offence and is liable to imprisonment for a term not exceeding ten years or is guilty of an offence punishable on summary conviction.**

It is possible that part of the increase in sexual assault reports results from an increase in reporting of child sexual abuse incidents that are charged as sexual assault. (In fact, it appears that on some occasions charges are laid under both sections.)

The evidence from the Bill C-127 evaluation research is that there has been an increase in the proportion of complainants under 14. For example, in Alberta the percentage of complainants under 14 rose from 26 per cent to 41 per cent from pre to post legislation (see University of Manitoba 1988b; Table 24). Likewise, in Manitoba the percentage under 14 rose from 23 to 49 per cent (University of Manitoba, 1988a; Table 30). This appears to be the pattern across all the sites (e.g., Hamilton, Ekos Research, 1988b; Table 21), although in some sites the age of the complainant is not presented.

This explanation of the increase in sexual assault reports combines both elements of the criminal justice response to sexual offending, and public awareness of the problem. That is, police officers may have changed their charging practices somewhat and the public, sensitized by media treatment of the problem of child sexual abuse of children (e.g., Ottawa Citizen, 1989), may be more likely to bring incidents to the attention of the criminal justice system. Whatever the explanation, the incidents of child sexual abuse would appear to have inflated the sexual assault statistics.

It must be pointed out that this trend alone cannot explain the increase, for these offences (s. 151, s. 152) were only introduced in 1987, and the increase in reports of sexual assault occurred earlier, in 1984.

(vi) Changing sex roles

Orcutt and Faison (1988) examined United States data on sex role attitudes and the likelihood that female victims would report victimizations to the police. They found that an increase in reporting rates was related to changes in sex role attitudes. Thus, as support for traditional sex roles declined, the number of rape incidents reported rose. Undoubtedly there has been a similar shift in attitudes in Canada as well, and this may account for part of the change in victims' reporting behaviour. The fact that the rise in reporting occurs so abruptly in 1983 eliminates this theory as the major explanation of changing reporting rates of sexual assault.

(vii) Reclassification of cases

The next section shows that the percentage of all assaults classified as Sexual Assault II or III has declined. This may explain a fraction of the increased reporting at level I. Perhaps police and crown counsel were less likely, in 1988, to lay charges at the higher levels of seriousness (compared with 1983). However, as with several of the alternative explanations examined in this report, this one cannot account for more than a small percentage of the increased number of Sexual Assault I reports.

To summarize, although alternative explanations for the rise in reporting exist, the most likely single explanation would appear to be a change in attitude on the part of victims. (The exact mechanism by which the change in attitudes has come about remains obscure. The valuable contribution made by front-line agency personnel, as well as police officers, may be responsible.) In other words, a greater proportion of victims are now coming forward to report their experiences to the police.

One last piece of evidence supports the view that the proportion of reported sexual assaults has increased (rather than there simply being an increase in offending). The Canadian Urban Victimization Survey, conducted before the law changed, revealed a reporting rate for sexual assault of 15 per cent. A second survey was made in one city in 1985, three years after the reforms. At the second stage the reporting rate was 39 per cent. Unfortunately the Victimization Survey was not repeated elsewhere in Canada, so this trend cannot be replicated. Nevertheless, it suggests that a greater proportion of sexual assaults are now being reported, and that this explains the increase in reports recorded by the criminal justice system.

2.3 Distribution of Sexual Assaults Across the Three Levels of Seriousness

Since the new legislation creates three offences, differentiated in terms of harm, and consequently by the severity of penalties that can be imposed, it is worth asking how the reported assaults break down across the three levels. Analysis of data from Statistics Canada (Canadian Crime Statistics) reveals at least two relevant findings. First, the vast majority of reports are classified at the first level of sexual assault. For the most recent year (1988) for which data are available, 95 per cent of reported (or known) incidents were classified as simple sexual assault. A further four per cent were classified as sexual assault with a weapon or causing harm. Only one per cent were classified as aggravated sexual assault. The same pattern emerges if we examine the category of "actual offences" (having removed incidents declared unfounded); once again 95 per cent of cases are classified at the first level. A comparable distribution also emerges for the statistic "cleared by charge": 94 per cent of the incidents are at the first level of seriousness.

Table 3 presents the distribution of reports across the three levels of sexual assault, for the period 1984 to 1988. From this table it is clear that the proportion of assaults classified as Sexual Assault I (rather than II or III) has risen steadily since 1984. This may reflect several factors, such as increased reluctance to lay a charge at the more serious level, but it is also consistent with the hypothesis proposed here, namely that there has been an increase in reporting, particularly reporting of the less serious incidents of sexual assault.

2.3.1 Charge Attrition

The imbalance is even greater at the stage of sentencing. For a variety of reasons, including plea bargaining, some of the original charges of Sexual Assault II and III will result in convictions of Sexual Assault I. Conviction data are not routinely available from the Canadian Centre for Justice Statistics, but an extrapolation can be made from a recent Toronto study (Nuttall, 1988) that found 22 per cent of Sexual Assault II charges ended in a Sexual Assault I conviction. Revising the data for 1988 shown in Table 3 on the basis of this kind of attrition would reveal the following distribution of convictions: Sexual Assault I: 96 per cent; Sexual Assault II: three per cent; Sexual Assault III: one per cent. The imbalance involving the three levels of sexual assault is even greater at the stage of conviction.

2.3.2 Comparison with Assault

Comparing reporting statistics for different offences is perilous, particularly when one of the offences is sexual assault. Later in this report we shall review the grounds upon which comparisons with nonsexual assault are made. For the present, we shall simply present the comparative statistics. The first level of nonsexual assault encompasses a significantly smaller proportion of total assaults. For example, the 1988 data reveal that the distribution of reported assaults is the following: assault (80 per cent); assault with a weapon or causing bodily harm (18 per cent); aggravated assault (two per cent). One interpretation of these comparative statistics is that the assault sections of the Criminal Code provide police officers with a more useful categorization of incidents than do the sexual assault sections, where almost every incident is classified as Sexual Assault I.

Having dealt with the empirical context of sexual assault, we review briefly recent proposals to reform law regarding sexual assault.

2.4 Recent Proposals to Reform Sentencing in Sexual Assault Cases

2.4.1 Canadian Sentencing Commission (1987)

One of the Commission's reforms was a proposal to lower the current maximum penalty schedule to make the maximum penalties more realistic. The most serious offences (except murder) would henceforth be subject to a new maximum of 12 years.

Table 3 Distribution of Reported Assaults Across the Three Levels of Seriousness[1]

	Sexual Assault Level		
YEAR	**I**[2]	**II**[3]	**III**[4]
1988	95	4	1 /100%
1987	94	4	2 /100%
1986	93	4	3 /100%
1985	93	4	3 /100%
1984	91	5	4 /100%

Notes to Table:

[1] Source: Canadian Centre for Justice Statistics (Canadian Crime Statistics)
[2] Sexual assault (s. 271)
[3] Sexual assault with a weapon or causing bodily harm (s. 272)
[4] Aggravated sexual assault (s. 273)

The 12 year "band" of offences would include aggravated sexual assault (level III). The next band would carry a maximum of nine years; at this level we find sexual assault with a weapon (level II). The least serious level of sexual assault would be contained in the six year maximum category. It is important to point out, however, that while these maxima are lower than the current ones, it was not the Sentencing Commission's intent to reduce the amount of time actually served in prison by any substantial degree. These new maxima would operate within a correctional system in which, for most offenders, early release on full parole would no longer exist. The Sentencing Commission's proposals in this area would remove the anomalies that exist in the present maximum penalty structure, of which sexual assault is but one. For example, as the report notes, sexual assault with a weapon (level II) carries the same maximum penalty as the offences of possession of housebreaking instruments and a public servant refusing to deliver up property (Canadian Sentencing Commission, 1987, p. 200). These anomalies would be resolved by the systematic overhaul of the maximum penalty structure advocated by the Canadian Sentencing Commission.

2.4.2 The Daubney Committee (1988)

The report of the Sentencing Commission was released in the spring of 1987. That same year the House of Commons Standing Committee on Justice and, Solicitor General initiated a review of sentencing, conditional release and related aspects of Canada's correctional system. Chaired by David Daubney, the Committee released a report (Taking Responsibility) in August 1988. While the general tone of the report stressed concepts such as reparation and reintegration, and supported in great part the Sentencing Commission's proposals, one recommendation stands apart from the rest, and it deals with sexual assault. The Sentencing Commission had recommended the abolition of all minimum penalties (with the exceptions of murder and high treason -- see Chapter 8 of the report). The Daubney committee's report, however, contained the following recommendation:

> Recommendation 10
>
> The Committee recommends that the minimum sentence for all offenders convicted of the second or subsequent offence for sexual assault involving violence be 10 years and that the parole ineligibility period be established legislatively as 10 years, regardless of sentence length.

The proposed 10 year minimum would result in much longer periods of incarceration. The Committee noted:

> there is consensus that both public protection and the expression of public revulsion for such conduct require that the minimum time to be served in prison by offenders who have more than once sexually assaulted others with violence be subject to legislative rather than judicial and administrative control (p. 70).

2.4.3 Metro Action Committee on Public Violence Against Women and Children (METRAC)

This organization has attained a nation-wide profile since its creation in 1984 by the Metro Toronto Council. It has conducted a great deal of research into sexual assault cases, particularly the kinds of aggravating and mitigating factors that judges take into account (see for example Ellis, 1989; Marshall, 1988). The issue of apparent leniency of current sentences for sexual assault is one of the problems identified by METRAC. This organization has also identified the sexism that exists in the law relating to sexual assault. Its solution to the problem appears to be increased judicial education, and possibly minimum penalties.

In any event, at the time of writing, neither the proposals of the Canadian Sentencing Commission nor the recommendations of the Daubney Committee have engendered any legislative change by the federal government. In 1988 an interdepartmental committee headed by the Department of Justice Canada was created to study both sets of proposals. The intervention of a federal election with a resulting change of both ministers responsible for criminal justice has undoubtedly slowed governmental reaction, but sentencing remains a priority for the Department of Justice Canada, and it is probable that legislation in the area of sentencing will be forthcoming in the near future.[3]

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[3] It is clear that the wheels of justice are slow to turn in this area. In 1984, Christine Boyle noted "at the time of writing, Parliament is considering an extensive legislative statement and reform of the general law of sentencing as well as other aspects of the criminal law" (p. 182). The review of which she writes has yet to be completed and the legislative statement (Bill C-49) was never passed.

3.0 PUBLIC OPINION, SENTENCING AND THE NEWS MEDIA

"Why are judges so lenient in sexual assault cases?"-- Chatelaine, September 1988

"Sexual assault on daughter nets minister probation" -- Winnipeg Free Press, April 21, 1989

"30-day sentence in sex assault now an appropriate 6 months" -- Toronto Star, July 15, 1988

"Three months in Jail isn't enough punishment for sex assault" -- Montreal Gazette, April 10, 1988

"Leniency protested in Sex assault case" -- Calgary Herald, January 20, 1988

"90-day jail sentence "trivializes" sex assault -- Calgary Herald, January 16, 1988

"The rape penalty furore: A sex assaulter's reduced sentence stirs a storm" -- Alberta Report

"Halifax man sentenced to 60 days for sexual assault" -- Halifax Chronicle Herald, June 6, 1986

"Deux sentences differentes pour des aggressions sexuelles" -- Le Droit, November 25, 1986

"Winnipeg fireman probation set for sexual assault" -- Montreal Gazette, September 9, 1983

"Manitoba Status of Women Council says sex attack sentence of 6 months "appallingly light" -- Winnipeg Free Press, August 10

"3 Months for sex assaults; Ontario parents demand appeal" -- Vancouver Sun, June 15, 1983

3.1 Media Accounts of Sentences in Sexual Assault Cases

Recent headlines concerning sentencing in sexual assault cases indicate to the newspaper reader that this area is highly problematic. This is important because research has shown that the public is highly dependent upon the news media -- particularly newspapers -- for information about the criminal justice system. Newspaper coverage of criminal justice topics is seldom systematic. Canadians learn a great deal about certain offences, certain cases and certain stages of the criminal justice process. The news media tend to focus on crimes of violence and on the investigation, arrest and trial phases of the criminal justice process. The result is that the Canadian public learns almost nothing about sentencing. In one major newspaper content analysis, Doris Graber reports that fewer than one criminal justice story in 10 contains a disposition (Graber, 1980). A content analysis of Toronto newspapers (Roberts, 1980) found that only 13 per cent of criminal justice stories contained information about the sentence or dealt with the sentencing process.

In 1988, the Department of Justice Canada published a systematic content analysis of all sentencing stories that had appeared in a sample of Canadian newspapers over a one year period. The analysis revealed that there are few stories about sentencing in the media. Those that appear are brief and furnish little information about the sentencing hearing: for example, the judges' reasons for sentence are almost never given. Offences involving violence are highly overrepresented, relative to their incidence in the crime statistics (see also Doob, 1985). Sexual assault was the third most frequently reported crime, preceded in frequency only by murder and manslaughter.

Perhaps the greatest difficulty with news media coverage of sentencing stories in general, and sexual assault stories in particular, is that they convey the impression that sentences are more lenient than is in fact the case. Although there are exceptions, most headlines dealing with cases of sexual assault describe a sentence that appears to be very lenient. In a poll conducted for the Canadian Sentencing Commission (1987), a representative sample of Canadians was asked if they had heard of a lenient sentence recently. Those who responded affirmatively were asked to name the offence that had resulted in the lenient sentence. After homicide, sexual assault was the most frequently cited offence. Clearly then, the major source of information about sentencing provides the public with sentences that leave the impression of excessive leniency on the part of the judiciary.

However, when pressed to answer the question **"What is the average sentence?"** for any crime, the public tends to systematically underestimate the severity of sentences actually imposed. This indicates that the media are being selective along the critical dimension of severity. It also suggests that part, at least, of public dissatisfaction with sexual assault sentences is due to public ignorance of the actual level of punitiveness in Canadian courts.[4]

But it is not just the selected offences that mislead the public. The news media frequently omit critical details of the cases that are reported. When provided with better information about the case, people's attitudes change; they become far more satisfied with the sentencing process (Doob and Roberts, 1984). As well, other research has found that people who have contact with the courts have more positive attitudes towards sentencing than do people who only learn about criminal justice through news media accounts. Part of the cause of public concern about sexual assault must then be inadequate media coverage of particular cases. As well, the context of sentencing is never given when the news media report a single case in which an offender receives an atypically lenient sentence. Readers who encounter headlines like those preceding this chapter often generalize and conclude, in the absence of comprehensive statistics, that all sentences in cases of sexual assault are too lenient. (See Diamond, 1989, and Nisbett and Ross, 1980, for a discussion of the shortcomings of the layperson in dealing with statistical material.)

The recent Ontario case of Bruce Glassford is a good example. The offender was sentenced to a 90 day intermittent term, with 12 months probation (with conditions) for the offence of sexual assault. The headline in the Globe and Mail was "Judge gives rapist 90-day sentence served weekends." Readers are likely to generalize from this and infer (a) that most incidents of sexual assault involve acts that formerly would be classified as rape and (b) that most cases of sexual assault result in similar sentences. It is probable that members of the public perceive sexual assault as simply the old offence of rape renamed. They are unlikely to conceive of the crime of sexual assault in terms of the kinds of acts formerly classified as indecent assault, although this is in fact the nature of many sexual assaults reported and then classified as Sexual Assault I. Finally, with respect to the Glassford decision, it is worth noting that on appeal by the Crown, the Ontario Court of Appeal imposed a much harsher sentence. This decision did not receive as much attention as the sentence of 90 days and probably escaped the attention of most readers who had seen the original report.

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[4] The importance of informing the public of the new legislation was acknowledged by the Department of Justice Canada. As part of the public legal education initiative, over 100,000 copies of the publication "...After Sexual Assault...Your Guide to the Criminal Justice System" (Department of Justice, 1988) were distributed.

The researchers responsible for the site evaluation study conducted in New Brunswick included a content analysis of newspapers in their research (J. and J. Research Associates, 1988). Two Fredericton newspapers and the Globe and Mail were monitored for an 11 month period. This search generated approximately 200 articles. It was clear that the newspapers focused on sensational sexual assault cases. The average case, resulting in an average sentence, does not get reported. In discussing a newspaper report of the 90 day sentence (see above) the report notes:

> Not surprisingly, there was, in the wake of this report, a spate of letters to the editor (of the Globe and Mail) and an article which argued, by listing a number of examples of recent cases, that sentences for sexual assault are unconscionably low. The author did not indicate what proportion of sexual assault cases receive low sentences compared to the proportion receiving lengthy sentences so that readers are left with the impression that penalties for sexual assault are invariably light (J. and J. Research Associates, 1988; Appendix B, p. 120).

Since the period covered by the content analysis (June 1987 to May 1988) did not correspond to the period covered by the analysis of criminal justice system files (1984 to 1987), it is not possible to directly compare sentences from the two sources. Clearly, a systematic comparison of the sentences reported in the media with the sentences being imposed in courts would provide useful information on the degree of media distortion of "reality".

To conclude this section, it would appear that increasing public awareness of actual sentencing trends would have beneficial effects on public opinion; increasing public knowledge may well lead to more positive attitudes towards the courts.

3.2 Public Views in the Area of Sentencing and Sexual Assault

3.2.1 Sentencing

Public views of sentencing in this area must be evaluated in the context of public views of sentencing in general. Most members of the Canadian public hold the view that sentences are too lenient. A recent nation-wide opinion poll (Environics Research Group, 1989) posed the following question: "Overall, do you think that the punishments being given to lawbreakers are too severe, too lenient or about right?". Fully 68 per cent endorsed the "too lenient" option. This question has been posed repeatedly over the past 20 years and the same result has consistently emerged (see Table 1, Roberts and Doob, 1989). Other research (Brillon, Louis-Guerin and Lamarche, 1984) reveals that when responding to this question most people are thinking of crimes of violence such as sexual assault. In survey research conducted by the Canadian Sentencing Commission in 1987, members of the public were asked to identify the offences that generated the most lenient sentences. Sexual offences headed the list: 83 per cent of the sample identified sexual crimes as the offence resulting in lenient dispositions. This exceeded drug offences (56 per cent) and drinking/driving offences, both of which generate considerable public concern. In addition, although there are no survey data directly testing the hypothesis, it is likely that when the average person thinks of a sexual assault, he or she has an image in mind that corresponds to the most serious level of sexual assault. This is a consequence of media coverage of the most serious cases of sexual assault.

This trend was noted by the Howard League in England:

> The popular newspapers are apt to give the impression that sex offences are far more prevalent than they are. Newspaper accounts featuring the most sensational cases, and using cliches like "sex fiend", give an exaggerated picture of the seriousness of the generality of sex offences (Howard League, 1985; p. 160).

Most recently, a qualitative investigation of public opinion in the area of criminal justice came to similar conclusions (Environics Research Group, 1989). The sentencing process was singled out as a problem area: once again, people cited lenient sentences appearing in the news media as evidence that sentencing was inappropriately lenient. The report of the study concluded:

> The prevalent opinion among most groups is that currently sentencing of offenders is far too lenient...group members gave some of the following examples: a rapist was jailed for only three months. Rapists in particular were mentioned as a group that "gets off too easily" (Environics Research, 1989; p. 12).

Public Punitiveness

All this would suggest that the public would favour a severe sentencing policy for offenders convicted of sexual assault. This in fact is the case: the Canadian Sentencing Commission asked a representative sample of Canadians to state the percentage of offenders convicted of a series of offences that should be sent to prison. Sexual assault headed the list: on average people felt that 89 per cent of convictions for sexual assault should result in incarceration. (No distinction was made in this poll between the three levels of sexual assault.) (See Weidner and Griffit (1983) for research linking public knowledge and public punishment preferences.)

There is a widespread impression then, fuelled by media accounts of lenient sentences, that the criminal justice system treats offenders convicted of sexual assault lightly. The consequences of this perception are far from being merely academic; if women are encouraged in the perception that courts are imposing overly lenient sentences upon offenders, it can only have a deleterious effect on their willingness to report sexual assaults. The Canadian Urban Victimization Survey (Solicitor General Canada (1984), carried out in 1982) found that a common reason given by sexual assault victims for not reporting their victimization concerned perceptions of the attitudes of the courts and the police. As well, there are consequences for penal policy in the area of sexual assault. The public clearly sees harsher sentences as the panacea to the rising incidence of sexual assault.

In this respect they appear to share the model of sentencing held by some appellate courts. In 1988, the Ontario Court of Appeal increased the sentence in the Glassford case (see above) from 90 days to two years less a day. The justification was that there had been an increase in such crimes in the immediate area -- exemplary sentencing, in short. The judgement was quoted in the Toronto Star: "While there are no statistics or comparable materials presented to us, we are sensitive to public concerns and **the importance of safety from such attacks.**" Thus, although they had no statistical evidence of an increase in the rate of offending (or reporting), the Court of Appeal nevertheless concluded an increase had occurred.

Finally, it is important to appreciate that public (and a certain degree of professional) concern turns upon the perception that there has been **an increase in offending**. There is no evidence that this is the case; as noted in the previous chapter, the increase in reporting since 1983 presumably reflects greater willingness on the part of victims to come forward rather than more offenders.

3.2.2 Sexual Assault: Recent Data on Knowledge and Attitudes Environics Research Poll

Knowledge

In 1987, a nation-wide poll on criminal justice attitudes (Environics Research Group Limited, 1987) included several questions on the topic of sexual assault. The results showed that over 80 per cent of respondents did not know that the offence of rape had been replaced by the offence of sexual assault. Also, over one-half believed (incorrectly) that it is still acceptable to question (in the course of a trial) victims of sexual assault about their past sexual behaviour. (There were no significant differences between male and female respondents on these questions.)

Respondents were aware of some changes, however. Thus, 77 per cent knew that both men and women can be charged with sexual assault. And 83 per cent were aware that charges can be laid against an individual when the victim is his or her spouse. Finally, three-quarters of the sample knew that a charge of sexual assault could be laid in the absence of sexual penetration.

Attitudes

The questions relating to public attitudes revealed consistently negative views. Almost two-thirds thought that more people get away with sexual assault, compared to the number who may get away with other kinds of assault.

Behaviour

The same survey posed a number of hypothetical questions to respondents. Almost 90 per cent indicated they would contact the police if they had been the victim of a sexual assault. An even higher percentage would report to the police if a friend had been the victim of a sexual assault. Female respondents were more likely to state they would report a sexual assault to the police. Respondents indicated they would be more likely to report to the police than to a sexual assault or rape crisis centre.

Although no comparable pre-1983 data are available, these figures provide further support for the view that attitudes towards reporting assaults have changed, and in all probability as a result of the 1983 legislative reform.

Recent Student Survey

To supplement the 1987 poll, a student survey was carried out for this report. The focus of the study was knowledge and opinion about sentencing in the area of sexual assault. Ideally it would have been preferable to have conducted a survey using a representative sample of Canadians. Such a study was beyond the temporal and fiscal constraints of this project. Instead a survey was conducted of students from several classes in Law and Criminology at the University of Ottawa and Carleton University. However, as will be seen, the attitudes of this group of individuals are consistent with the attitudes reflected in nation-wide polls.

(1) Attitudes towards and knowledge of sentencing in sexual assault

The first two questions on the survey addressed attitudes towards the severity of sentences imposed (see Appendix A for a copy of the questionnaire with summary statistics). The results confirmed the findings of polls using representative samples of the public. Fifty-eight per cent of respondents endorsed the view that sentences in general were too lenient; 86 per cent said that sentences for the crime of sexual assault were too lenient.

(2) Knowledge of when the law changed

The students, some of whom had taken several courses in law and/or criminology, were asked if they knew when the sexual assault legislation was introduced. (They were told that this legislation replaced the old categories of rape and indecent assault). Defining as correct those who responded with 1982, 1983 or 1984, only 12 per cent of respondents were correct.

(3) Knowledge of maximum penalties

Most failed to provide a response to questions asking for the maximum penalties for sexual assault: those that did essay a response underestimated the maxima. For example, the average estimate of the maximum penalty for Sexual Assault Level I was five years. This result is consistent with earlier research that has surveyed public knowledge of maximum penalties for other offences (Canadian Sentencing Commission, 1987; Williams, Gibbs and Erickson, 1980).

(4) Knowledge of current sentencing trends

The next three questions addressed perceptions of the current incarceration rates for the three levels of sexual assault. The average estimates for Sexual Assault I, II and III were, respectively, 29 per cent, 40 per cent and 78 per cent. These estimates, made by respondents more likely than the average person to know about such matters, are substantially below the actual incarceration rates (as will be seen in Chapters 5 through 7 in this report).

(5) Opinion as to the appropriate incarceration rate

A clear contrast is apparent between perceptions of how many offenders of sexual assault are incarcerated, and the opinion as to what percentage should be incarcerated. The average incarceration rates for the three levels of sexual assault supported by this sample of respondents were 80 per cent, 92 per cent and 95 per cent. More telling are the proportions of respondents who chose 100 per cent as a response. For example, fully 49 per cent of subjects wrote that all offenders convicted of Sexual Assault I should be incarcerated. The proportion endorsing 100 per cent incarceration rose to 62 per cent for the second level of sexual assault, and 77 per cent for aggravated assault.

Finally, the incarceration rate for sexual assault (averaged across the three levels) favoured by this sample was 89 per cent. This is exactly the same as the figure derived from the nation-wide poll conducted by the Canadian Sentencing Commission in 1987. This further supports the validity of conclusions drawn from this small survey.

3.3 Summary

The results are clear: if an elite sample is so unaware of current sentencing practice, it is likely that the average member of the public will know even less. As well, these data suggest that part of the dissatisfaction with sentencing trends could be reduced by providing more accurate information about current sentencing practice. Recall that the estimate of the percentage of offenders convicted of sexual assault who are incarcerated was 29 per cent. The percentage that should be incarcerated (according to this sample) was 80 per cent. As will be seen in later chapters, in reality the percentage of offenders incarcerated is much higher than 29 per cent. In all probability, it is between 60 and 80 per cent. If the public knew this, it might be more satisfied with the severity of sentences currently imposed.

4.0 THE NATURE OF SEXUAL ASSAULT I

One of the problems that has emerged since the change in the law, is determining the nature of the new offences. With a broadly defined offence, any analysis of the nature of assaults reported is going to generate a wide range of incidents. The new offences of sexual assault encompass a greater range of assaults than the earlier crime of rape, to which are now added acts formerly classified as attempt rape and indecent assault. This section will provide a brief description of the nature of the first level of sexual assault, drawing upon the Department of Justice Canada evaluation research. The emphasis is on Sexual Assault I, since the first level accounts for 95 per cent of cases and is the least well defined.

Physical force was reported in 63 per cent of the incidents reported to police and a slightly higher percentage of incidents reported to sexual assault centres. The nature of force used consisted of grabbing or restraining. Physical injuries were reported in 11 per cent of reports to the police and 12 per cent of reports to a sexual assault centre. Approximately one-third of victims went to a medical facility in the post reform period. These findings are fairly typical of the other sites as well. For example, in Manitoba, 53 per cent of cases involved physical force, with this consisting of grabbing and restraining two-thirds of the time. In New Brunswick, force was present in 59 per cent of the cases reported. The Manitoba site report indicates that "the most common type of sexual offence involved touching and grabbing" (p. 98). This view is sustained by data from Quebec:

> La plupart (70 pourcent) des agressions rapportées à la police sont de peu de gravité si on considère objectivement la nature des actes subis par la victime et decrits au paré ces de police. L'utilisation d'armes est relativement peu fréquente (ten pourcent) mais il y a eu violence physique dans environ la moitié des cas. Pourtant, selon les dossiers de police, les trois-quarts des victimes n'auraient subi aucune blessure ou encore des blessures légères[5] (Baril et al., 1989; p. 51).

These data describe the extent of physical injuries inflicted upon the offender. The psychological effects are harder to estimate but, clearly, if psychological harm is also included the statistics would be even more striking. As well, these data reveal little about the long-term psychological consequences to the victim of a sexual assault. These may be considerable (see Marshall, 1988 and below).

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[5] The majority (70 per cent) of assaults reported to the police are of lesser seriousness, if one considers objectively the kinds of acts perpetrated upon victims and described by the police. The use of firearms is relatively rare (10 per cent) but physical violence is present in about one-half of the cases. However, according to the police files, three-quarters of the victims sustained either no injuries or only minor injuries.

The report of the Hamilton site evaluation presents a breakdown of the type of sexual contact in reported incidents in the post reform period. The most frequent category was "sexual touching of complainant", that accounted for 43 per cent of cases. The next most frequent category was "invitation to sexually fondle offender" (32 per cent). Intercourse accounted for one-quarter of reports. In Hamilton-Wentworth, the two categories of "invitation to fondling" and "touching and grabbing" accounted for almost three-quarters of the sexual assault reports (see Ekos Research Associates, 1988b, Table 25). In all probability, these kinds of behaviours would have been classified in the past as indecent assault; now they are classified as sexual assault.

Of course the degree of harm caused, a prime determinant of the seriousness of the offence, and hence the severity of the penalty, cannot be determined solely by reference to incident reports compiled at the time of the assault. Compared to other assaults, the consequences of sexual assault last longer and are more serious. For example, Marshall (1988) cites a United States survey of sexual assault victims that found that 44 per cent of rape victims thought seriously about suicide or actually attempted suicide. This compares to 11 per cent of robbery victims who reported similar feelings or actions of self-destruction.

These findings of long-term consequences are relevant to the issue of victim impact statements. It is only through the systematic introduction of such statements that the court can be made aware of the true extent of harm inflicted upon victims of sexual assault. The Department of Justice Canada is currently conducting a series of evaluations of the impact of victim impact statements upon sentencing in Canada. The results of those evaluations will be of interest to professionals working in the area of sexual assault.

4.1 Sexual Assault Measured by Victimization Surveys

To this point, the discussion has focused on sexual assaults reported to the police. At the time in question, this captures fewer than one-half the assaults committed. In order to obtain a more comprehensive picture of the nature of sexual assault, we need to turn to the other principal source of information: victimization surveys. A recent major crime survey was conducted in 14 countries, including Canada (van Dijk, Mayhew and Killias, 1989). Respondents were asked to indicate any sexual crimes of which they had been victims within the previous five year period, that coincidentally covers the years since the change in the law (1983 to 1988). Specifically, respondents were asked the following question: "Would you describe the incident as a rape, an attempted rape, an indecent assault or just as behaviour which you found offensive?" This kind of a survey is useful because one does not have to rely upon the classifications of police officers, who may have a very different perceptions of a sexual assault than a victim. In this kind of survey, it is the victim him or herself who is doing the classifying. Fewer than four per cent of the incidents were classified as rape. An additional 4.6 per cent of the incidents were classified as attempted rape and 21 per cent as indecent assault. Most cases (71 per cent) were classified as offensive behaviour. (These are the statistics for the entire survey; Canadian data alone are not yet available.)

Only one incident in eight was reported to the police, indicating that this methodology captures a very different population of assaults than those that make their way into the statistical publications of the Canadian criminal justice system.

4.2 Sexual Assault and the Earlier Offence of Rape

What is the relationship between the earlier offences of rape/attempt rape and the new offences of sexual assault? Only a minority of convictions for Sexual Assault I are for acts that formerly would have been classified as rape. The evidence for this comes from the Canadian Centre for Justice Statistics data. In 1982, the police recorded 10,990 actual offences of rape, attempted rape or indecent assault. Of these, 23 per cent were for rape or attempted rape (Canadian Crime Statistics, 1982). A certain number of these (the most serious) would be classified, after 1983, as sexual assault with a weapon or aggravated sexual assault. Excluding the attempts for the present, it is likely that crimes of rape, as defined by the Criminal Code prior to 1983, account for a small minority of current charges at the first level of sexual assault. However, when the public thinks of sexual assault, in all probability, it is thinking of acts of sexual aggression that correspond to the old crime of rape. There may well be a discrepancy between the offence that the public conceives of, and the typical assault confronting judges on a daily basis in Canadian courts. If this is the case, then public legal education is a priority.

4.3 Comparisons Between Sexual Assault and Other Offences

Before proceeding to an examination of sentencing practices, one final issue will be addressed -- namely the legitimacy of making comparisons between sexual and nonsexual assault. This will involve a brief review of the treatment of the two categories of offence at various stages of the criminal justice process.

(1) Reporting rates

One reason to be sceptical about comparisons between sexual and nonsexual assaults is that the reporting rates, and the motivations for nonreporting, are very different. It has been argued that the low reporting rates of crimes of sexual aggression makes comparisons with other offences inappropriate. If reporting rates for sexual assault are significantly lower than the reporting rates associated with the offence of comparison (nonsexual assault), then sentencing comparisons will be misleading. The reason is that the cases of sexual assault that result in the imposition of a sentence are likely to include a disproportionate number of the more serious cases of sexual assault. The cases of sexual assault resulting in a sentence will be more unrepresentative of the total pool of sexual offences committed than the cases of assault resulting in a sentence. It is important therefore to assess the relative reporting rates of the two kinds of assault.

The evidence from the Canadian Urban Victimization Survey suggests that reporting rates for the two offences are comparable. In fact, a slightly higher percentage (38 per cent compared to 34 per cent) of sexual assaults are reported to the police (Solicitor General Canada, 1984). This is also true for data from other countries. Recent United States data (United States Department of Justice, 1987; Table 6) show that 53 per cent of victimizations of rape were reported to the police. This is higher than the overall percentage of crimes of violence reported (48 per cent) or the percentage of nonsexual assaults reported (also 48 per cent).

It has been argued that victims of sexual assault fail to report victimizations to the police as a result of the perception that to do so would be at best futile and at worst counter-productive. That is to say, the victimization experience would be protracted by participating in the criminal justice response to this particular crime. In this respect, the treatment of sexual assault victims is said to differ from the treatment of assault victims. The evidence for such a difference, however, is mixed. The Canadian Urban Victimization Survey (Solicitor General Canada, 1984) found that this reason for nonreporting was cited more often by victims of sexual assault than by victims of assault. Yet, it was not the most frequently cited reason for either kind of assault. Moreover, the more recent and more comprehensive International Crime Survey, in which Canada participated in 1988 (van Dijk, Mayhew and Killias, 1989), found a similar pattern of accounting for nonreporting for the two kinds of assault. The most frequently cited reason for failing to report incidents of sexual assault was that the incident was "not serious enough" (37 per cent of respondents). The comparable statistic for nonsexual assault was 35 per cent.

This finding is supported by research on the conditions under which victims of sexual assault are most likely to report to the police. Williams (1984) found that the most serious cases were more likely to be reported.

(2) Unfounded rates

Different criminal justice statistics sustain the view that the treatment of sexual assault cases resembles the treatment of other kinds of cases processed by the criminal justice system. Unfounded incidents are reports that are determined, after a preliminary investigation by the police, to be invalid. Comparisons of the unfounded rates of various offences reveals similar percentages of cases being classified as unfounded. In 1987, the most recent year for which data are available, the unfounded rate for sexual assault was 15 per cent. By way of comparison, for manslaughter it was 13 per cent. It might be argued that manslaughter is an offence that is more likely to be reported than most offences, and is accordingly not appropriate for comparative purposes. Perhaps comparisons between sexual and nonsexual assault are more appropriate. The aggregate unfounded rate for the three categories of assault for the same year was seven per cent. (Assault like sexual assault is an offence that is substantially underreported.) The category "other assaults" generated an unfounded rate of 11 per cent. In short, the unfounded rate for sexual assault, while higher than for nonsexual assault, is not very discrepant from offences of comparable seriousness, such as manslaughter.

(3) Clearance rates

The clearance rate is the proportion of "actual offences" (i.e., offences that were not unfounded) cleared by the laying of a charge. Examination of clearance rate statistics reveals a similar pattern of consistency between sexual and nonsexual offences. The clearance rate for sexual assault in 1988 was 48 per cent for Sexual Assault I, 56 per cent for Sexual Assault II and 64 per cent for aggravated sexual assault. (The average clearance rate across the three levels was 48 per cent; the vast majority of cases are classified as Sexual Assault I.) How does this compare with other offences? The average clearance rate for all crimes of violence was 46 per cent in 1988. The clearance rates for the three levels of assault were, respectively, 43 per cent, 63 per cent and 66 per cent. The average clearance rate for the three assault offences was 46 per cent. Thus, the pattern is quite similar to the clearance rates of the three offences of sexual assault. Similar conclusions were reached in analyses or rape data from the United States (see Galvin and Polk, 1983 and Polk, 1985). The latter states: one cannot conclude that there is a distinctive pattern whereby rape stands out as having a uniquely lower rate of police clearances than other serious felony offences (p. 196).

(4) Case attrition rates

Most people are aware that sexual assault is one of the most underreported violent crimes. As already noted, most sexual assaults are never (for various reasons) reported to the criminal justice system. However, a great deal of selection, or attrition as it is called, also takes place from the initial sample of reported incidents through to the number sentenced. Attrition exists for all offences reported to the police, but the critical question for the present research is whether the attrition rate for sexual assault is any higher than the attrition rate for other offences against the person. Certainly the percentage of incidents filtered out by the criminal justice system prior to sentencing is high: Begin (1987) cites data reported by Kinnon (1981) in which only about one-half the individuals accused of rape were convicted. This compares to an overall conviction rate in the criminal justice system of 86 per cent. More recently, the Department of Justice Canada Bill C-127 study in Winnipeg found that 71 per cent of the original reports to the police in the post reform period were filtered out by the police, the crown or the court (University of Manitoba Research, 1988a). In fact, it has been long claimed that the criminal justice system filters out sexual assault cases -- for whatever reason, and numerous hypotheses have been suggested -- more rigorously than other kinds of offences.

The most recent research specifically addressing the issue of attrition, however, has demonstrated that the attrition rate for sexual assault is not very different from the attrition rate for other crimes of violence. Data collected recently in Winnipeg found that of the original sample of persons charged with rape, (the data were collected prior to 1983) 71 per cent were filtered out but this was not very different from other violent crimes. The authors concluded:

> On the whole, the data do not support the view that the criminal justice system treats sexual offences differently than other types of crime (Minch, Linden and Johnson, 1987; p. 402).

Similar conclusions were reached by other researchers: Galvin and Polk (1983); Lafree and Myers (1982); Chappell (1984) and most recently by Steffensmeir (1988). Caringella-MacDonald studied the processing of sexual and nonsexual assaults in a Michigan jurisdiction operating under rape reform legislation. Charges were more likely to be pursued in cases of sexual assault than other offences.

(5) Conviction rates

Finally, with respect to the conviction rates, comparisons between assault and sexual assault reveal few differences. Loh (1980) provides nation-wide data from the United States that show a 57 per cent conviction rate for assault compared to a 59 per cent conviction rate for rape. He notes:

> Since the evidentiary difficulties in prosecuting rape are typically greater than in assault, it is notable that their respective conviction rates are not more discrepant. And further:
>
> > rape convictions have consistently averaged only 19 per cent below convictions for homicide, which is the most successfully prosecuted violent offense. In view of the unique problems of rape prosecution, and the not substantially higher conviction rates for other, more easily prosecuted violent offenses, it cannot be said that rape convictions are disproportionately low (Loh, 1980; p. 594).

Of course, it may be argued that the conviction rate should be higher for sexual assault than for other crimes. The reason for this is the following. One determinant of whether a victim of sexual assault reports to the police is the perceived probability of obtaining a conviction. Victims of sexual assault -- to a greater extent than victims of assault -- are more likely to report an assault for which they perceive a conviction to be probable. And, since the probability of obtaining a conviction is correlated with the strength of the prosecution's case, the conviction rate for sexual assault should be higher because the cases against the accuseds are stronger.

Finally, more recent Canadian data (Hann and Kopelman, 1988) show comparable conviction rates for assault and sexual assault. Thus, 73 per cent of assault charges (single count) resulted in a conviction. Exactly the same percentage of sexual assault charges resulted in a conviction. When there were multiple counts, the conviction rate for sexual assault was higher than the conviction rate for nonsexual assault (see Hann and Kopelman, 1988; Figure 4.2).

4.4 Summary

The issue of comparability of treatment is critical in the present context. If the conviction rates (or unfounded rates, or clearance rates) are much lower (or the attrition rates much higher) for sexual offences, then comparisons in terms of sentences imposed would inevitably be specious; it is the most serious cases that 'stay the course' through to the stage of sentencing. These recent data are not conclusive; further, in-depth research tracing cases through the system is necessary. (This suggestion is also made in the Department of Justice Canada

Bill C-127 studies; see for example, Ekos Research Associates, 1988a; p. 189.) However, at the very least they suggest that comparisons between sexual and other crimes of violence are not totally inappropriate.

To conclude, while the two categories of offence are clearly different in terms of their relative seriousness (and this is reflected in the disparate maximum penalties), it would appear legitimate to compare sexual and nonsexual assault in terms of processing variables.

One of the best United States studies to date compared the official reaction to crimes of sexual assault and other offences (Myers and Lafree, 1982). Its conclusions undermine the view that sexual assault is a unique crime in terms of official processing.

> Our analysis showed that although there are striking differences between sexual assaults and other crimes in terms of the characteristics of victims, defendants and evidence, these differences were not consistently translated into different official reactions (Myers and Lafree, 1982; p. 1297).

5.0 RECENT SENTENCING TRENDS I

5.1 Department of Justice Canada Bill C-127 Evaluation Research

In order to examine the impact of the sexual assault legislation, the Department of Justice Canada commissioned a series of empirical studies that gathered data in six locations across the country: Vancouver, Lethbridge, Winnipeg, Hamilton, Montreal and Fredericton. The research was preceded by two background studies (see Begin, 1987, for further details of the research program). Sentencing was not a major focus of the legislation; neither was it a primary object of the legislative evaluation research. In this respect, for the purposes of the present report on sentencing, the individual site reports proved to be of restricted usefulness. Researchers had variable success in obtaining sentencing data. (This is not a reflection on the researchers; it merely indicates the difficulty of obtaining data recorded in police and crown files for purposes other than research.) As the authors of the Hamilton, Ontario site study warn:

> We have limited sentencing data. A substantial minority of the police files lack information on the final sentence (when a conviction had been obtained). As a result, these findings as to sentencing should be considered as suggestive and descriptive rather than confirmatory of differences over time (EKOS Research Associates, 1988b; p. 116 .

For Sexual Assault I, 55 per cent of convictions resulted in a sentence of imprisonment. The next most frequent disposition was a period of probation that accounted for approximately 15 per cent of convictions. According to the most recent data, the modal (most frequent) sentence -- by far -- for the offence of Sexual Assault I was, therefore, a period of imprisonment. When we examine the sentence lengths, analysis reveals that the average length of imprisonment was 19 months.

There were far fewer cases of Sexual Assault II and III, but examining the Sexual Assault II cases we find that almost all resulted in a substantial period of incarceration: the average sentence length was 55 months.

These trends are consistent with the findings from other research. For example, a small scale monitoring project was carried out for the Alberta Law Foundation in 1984 (Price, 1984). In the sentences recorded in that study, the majority of Sexual Assault I convictions resulted in imprisonment. The average sentence length was 31 months, but this figure is slightly inflated due to the presence of one offender, upon whom the court had imposed the maximum sentence of 10 years. Of the Sexual Assault II convictions, 90 per cent resulted in a sentence of imprisonment (slightly lower than the comparable statistic from the Bill C-127 evaluation studies), with an average sentence length of 37 months.

Of the convictions recorded for aggravated sexual assault, all resulted in sentences of imprisonment, and the average length of sentence was five years. These data suggest that the findings from the site evaluations are reliable, for they coincide with sentencing trends derived from other sources. We shall now turn to different databases deriving from the same time period as the Department of Justice Canada Bill C-127 evaluation studies.

5.2 Canadian Sentencing Commission Data

In 1987, the Canadian Sentencing Commission published its report containing a great deal of original research. One of the Commission's research activities involved the collection of data on sentencing trends across the country. This exercise was necessary because of the absence of routinely collected sentencing data (see Chapter 1). The Commission composed a picture of sentencing in Canada in 1983 to 1984 with data drawn from the Fingerprint Service of the RCMP (see Chapter 9 of the Commission's report).

The incarceration rates for sexual assault from this database are consistent with the incarceration rates from other sources. Almost all (95 per cent) convictions of aggravated sexual assault resulted in sentences of imprisonment. The incarceration rate for sexual assault with a weapon was almost as high: 90 per cent. As for the first level of sexual assault, it generated an incarceration rate of 66 per cent. In terms of sentence lengths, Appendix F of the Commission's report notes that the 90th percentile sentence for the middle level of sexual assault with a weapon, threats to a third party or causing bodily harm was eight years. The sentence encompassing 90 per cent of cases (the 90th percentile) for Sexual Assault I was three years (see Table 9.3 of the Commission's report). (Statistics for aggravated sexual assault are not provided in the report.)

5.3 Comparison with Nonsexual Assault

How do these sentencing trends compare to sentencing patterns for nonsexual assault? The 90th percentile sentence length (three years) for the first level of sexual assault can be compared to the figure of six months for the first level of nonsexual assault (s. 266). The eight year statistic for sexual assault with a weapon can be compared to one year for assault with weapon (s. 267). Sexual assault is a more serious offence than nonsexual assault. Parliament acknowledged as much when it created the new penalty structure in 1983. These data show that courts in Canada treat the two types of offences in a way that directly reflects the intention of the legislators.

5.4 Have Sentences Become Harsher Since the Change in Law?

5.4.1 Problems with Evaluating re Impact of Reforms

One of the most intractable problems confronting socio-legal researchers concerns the evaluation of legislative interventions in the criminal justice system. Legal reforms such as Bill C-127 constitute a kind of "natural experiment": there is a "before" (the period up to January 1, 1983) and an "after". Logically it may seem a rather straightforward question to ask whether, for example, abolition of the death penalty has affected the homicide rate, or whether instituting a new minimum penalty has reduced the incidence of impaired driving. In reality, an experimental design of this kind is weak. Many things change at the same time; many different explanations can exist for any differences between the before and after periods. For example, the introduction of stiffer penalties for drinking and driving (in 1985) was accompanied by a graphic media campaign depicting the carnage resulting from driving while under the influence of alcohol. If the number of convictions for impaired driving declines, is it because motorists are deterred by fear of the legal consequences (the higher penalties) or by fear of becoming a crash victim? From a social policy perspective, it may be of little consequence; the campaign has proved effective; the incidence of impaired driving has decreased. From the perspective of criminal justice policy, however, the difference is critical: we need to know whether the severity (or certainty) of penalties affects the incidence of crimes for which they are imposed or whether other, nonlegislative interventions are equally effective in affecting behavioral change.

The difficulty then is that when the socio-legal environment changes in several ways, it is hard to isolate the independent effect of any single factor such as a change in the penalty structure. In 1983, the law defining the crime and the punishments for nonconsensual sexual crimes changed in many ways. Several different crimes (e.g., rape, attempt rape, indecent assault) were now replaced by one of three levels of sexual assault. As well, several other factors may have played a role in affecting sentencing. These include the new procedural rules concerning the treatment of sexual assault cases; the increased publicity both directly from the Department of Justice Canada and indirectly through media coverage of the new legislation; and the impact of several key judicial decisions at the appellate level. As well, specialized sexual assault teams have become far more frequent in many police forces across the country. In addition, related but independent criminal justice changes due to the federal Victims of Crime initiative may have had an impact.

Chapter 2 presented data showing the increase in the number of reports of sexual assault in recent years. This increase may have influenced sentencing patterns. In short it is no easy task to know what has been responsible for any change in sentencing patterns.

5.4.2 Difficulties with Comparing Sentences for Sexual Assault and Rape

Finally there is the problem of noncomparability. To what earlier crimes, for example, is the new offence of aggravated sexual assault to be compared? It encompasses the most serious sexual crimes committed that used to be classified as rapes. In order to know if sentences have changed for this kind of antisocial behaviour, one would need to compare current sentencing trends for aggravated sexual assault with a comparable sample of the most serious rapes under the old legislation. A measure of the seriousness of the rape would be needed and this would require combing through police, crown and court files in an attempt to match cases from the two time periods. **In short, it is not sufficient to simply compare sentences imposed for rape in 1982 with sentences for sexual assault in 1984.**

The means to make an unequivocal comparison of sentencing trends before and after the implementation of Bill C-127 are simply not available at this time. In addition to the problems outlined above, aside from the information gathered as a part of the sexual assault legislation research, sentencing data are not available from the period just before the reforms. Nevertheless, an attempt was made in that evaluation research to assess changes in sentencing and we shall presently review the evidence. First, however, we return to the issue of perceptions, four surveys were conducted of criminal justice personnel that included questions relevant to sentencing practices.

5.4.3 Perceptions of Sentencing Trends in Sexual Assault Cases

Increasing the severity of sentences for this crime does not appear to have been one of the principal aims of the 1983 legislation; nevertheless, neither was it the intention of drafters of the legislation to make sentencing practices more lenient. And yet there appears to be the impression among some key personnel in front-line agencies that sentences have become more lenient. Respondents to a survey of front-line workers were asked about numerous aspects of the new legislation. Fully 73 per cent of the respondents believed that sentences had become more lenient due to Bill C-127. There was even greater consensus among the sexual assault centre respondents, 83 per cent of whom "had a very strong sense that sentences were lighter because of changes in the legislation" (CS/RESORS Consulting, 1988; p. 62).

These are perceptions only, based upon small and unrepresentative samples of respondents. Similar findings, however, are reported in the evaluation site studies. The researchers in Alberta note that "There was agreement among sexual assault centre workers that the sentences do not reflect the seriousness of sexual assault" (University of Manitoba, 1988b; p. 72). As already noted, noone in the criminal justice system (including these individuals) has access to systematic sentencing statistics on which to base a reasoned opinion. Nevertheless, sexual assault centre personnel have close, important ties with the victims of sexual assault who may well be affected by such views.

Chapter 2 noted the widespread perception by front-line personnel that sentences had become more lenient since 1983. As part of the evaluation research in all six sites, defence counsel were asked the following question: "Since 1983, have you noticed any change in the length of sentences imposed for comparable sexual offences?" Respondents were asked to consider indecent assault versus Sexual Assault I and rape versus Sexual Assault II and III. If respondents answered that changes had taken place, they were further asked if they thought the legislative amendments had been responsible. Finally, they were asked if they thought the lengths of sentences currently being imposed were generally appropriate. Unfortunately, not all the evaluation site reports provide the results of this survey. From those that do, it would appear that reaction to sentencing in the post reform era is mixed. Defence counsel seem to feel that sentences are appropriate or somewhat harsh. When the issue was put to crown counsel, they were less satisfied with the current level of severity. The perspectives of both crown and defence counsel have to be taken into account; they explain in large part the divergence of perception on the critical question of sentencing severity. The Alberta site report notes:

> Unlike prosecutors who thought they were shorter, defence lawyers believed that sentences for sexual assault have been getting longer for some time, possibly beginning before 1983 . . . . Generally speaking, defence lawyers found the sentences being imposed to be appropriate: "I can't think of any that have appalled me" (University of Manitoba Research, 1988a; p. 71-72).

Similar findings emerged from the New Brunswick evaluation:

> On the whole, sentencing for more serious assaults is not perceived as having changed much since Bill C-127 came into force. Surprisingly, all felt that, on the whole, sentences meted out to offenders were generally appropriate given the fact situation surrounding the case (J. and J. Research Associates, 1988; p. 61).

Finally, in Hamilton-Wentworth, "The majority of defence lawyers interviewed (four of six) believed sentences had increased." (p. 119)

At this same site, the views of crown counsel were quite different. Five of the seven crown counsels expressed the opinion that sentences were too lenient. The problem appeared to lie with repeat offenders convicted of the first level of sexual assault. Insofar as changes are concerned, the consensus appeared to be that there had been little change in sentencing practices since the reform. The Hamilton study is illustrative:

Crown counsel were divided on whether sentence lengths had altered as a result of the amendments . . . most were reluctant to attribute any changes to the amendments. (p. 117) and later:

> The majority of defence lawyers interviewed believed that sentences had increased . . . None believed that the amendments were primarily responsible (two believed that the amendments had had some modest impact and two discounted any impact from the amendments) (EKOS Research Associates, 1988b; p. 119).

5.4.4 Conclusion

The general conclusion one can draw from an examination of sentences imposed prior to, and since the reform, is that sentences have stayed about the same, or have increased somewhat in severity. There is certainly more evidence that they have become harsher than evidence that they have become more lenient. For example, examination of sentences imposed in Montreal revealed that the convictions post 1983 resulted in imprisonment in 60 per cent of cases, a figure that corresponds fairly closely with the incarceration rate for sexual assault from other data sources. Moreover, this is higher than the incarceration rate for the period immediately preceding the reform. The authors of the report state:

> Il semble que, depuis 1983, les peines soient devenues plus sévères. L'amende a chuté considerablement alors que le nombre de sentences de détention à augmenté sans toutefois que leur durée ne soit allongée (Baril, Bettez and Viau, 1988; p. 156).[6]

Data from several other jurisdictions, however, show little change. For example, in Winnipeg, incarceration was the final disposition in approximately 63 per cent of cases in the prereform legislation period. This includes rape, attempted rape and indecent assault. The incarceration rate for all three levels of sexual assault combined for the years 1984 and 1985 was 59 per cent. The researchers concluded "Length of incarceration showed no significant differences between the two time periods" (p. xi).

The Hamilton study found some evidence of a decline in sentence length from the prereform to the postreform period, but any interpretation that this is evidence of a significant decline must be qualified. The following quote illustrates well the difficulty of drawing firm inferences:

> We cannot assume that this finding demonstrates that sentence lengths have fallen as a result of the amendments. The amendments changed the definition of the offence and sentencing maxima, and offered protection to a wider population. Secondly, we have previously noted changes in the reporting population, labelling and type of offences reported. In particular, we noted a fall in the proportion of complainants who were physically injured during the assault. Thirdly, the sentencing data were sometimes absent and we cannot be sure that the missing sentences were similar in length to the sentences for which we have information. Fourthly, we have few cases on which to base the analysis, in particular there are very few rape and Level III sentences (EKOS Research Associates, 1988b; p. 116-117).

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[6] "It would seem that since 1983, sentences have become harsher. The use of fines has diminished considerably, while the number of sentences of custody has increased although the duration of terms of imprisonment has not increased".

5.5 Sentencing Variation

Finally, using the Department of Justice Canada research on Bill C-127 as a database, we turn to the issue of sentencing disparity. It is reasonable to expect that there would be substantial variation in sentencing for Sexual Assault I, and that the degree of variation would have grown since the change in legislation. The first level of sexual assault encompasses approximately 95 per cent of reported cases of sexual assault (see Chapter 2). This means it includes a range of behaviours that varies considerably in seriousness. There is, therefore, great scope of variation in sentencing.

The data strongly suggest that a fair amount of this disparity is unwarranted. Without repeating the analyses from the evaluation studies, the pattern of findings is similar; a substantial degree of sentencing variation exists, particularly for the first level of sexual assault. As noted in one site:

> Another striking finding evident in Table 45 concerns the wide variations in sentencing. Two offenders convicted of Level I sexual assaults received relatively small fines and probation orders. The jail terms handed down to five offenders ranged from seven months to 14 years (EKOS Research Associates, 1988a; p. 63).

Sexual assault is by definition a very broad offence. It includes very serious sexual assaults formerly classified as rape, and lesser crimes previously known as indecent assault. One would expect then the sentencing patterns to be broad to reflect the diversity in the incidents giving rise to convictions. The critical question is whether the extent of disparity in dispositions exceeds the variation in seriousness of the crimes for which these sentences are imposed.

6.0 RECENT SENTENCING TRENDS II: COMPUTERIZED SENTENCING DATABASES

6.1 Computers and the Law Project (B.C.)

Two projects have been developed to improve the sentencing process by providing judges with more systematic sentencing data than is currently available to them. One project exists in several provinces and was created by Professor Anthony Doob at the University of Toronto (see Doob and Park, 1987) The second is known as the Computers and the Law Project and is located in British Columbia. It contains a sentencing database directed by Professor John Hogarth of the University of British Columbia. This project contains a sentencing database system that provides several different kinds of information to participating judges in the British Columbia court system. One of the sources of information is trial decisions.

The sentencing database system thus contains information not routinely available on sentencing decisions in the province of British Columbia, and as such, it constitutes a valuable source of information on the sentencing patterns of sexual assault cases in that province. The period available at the time of writing was 1984 to 1986.

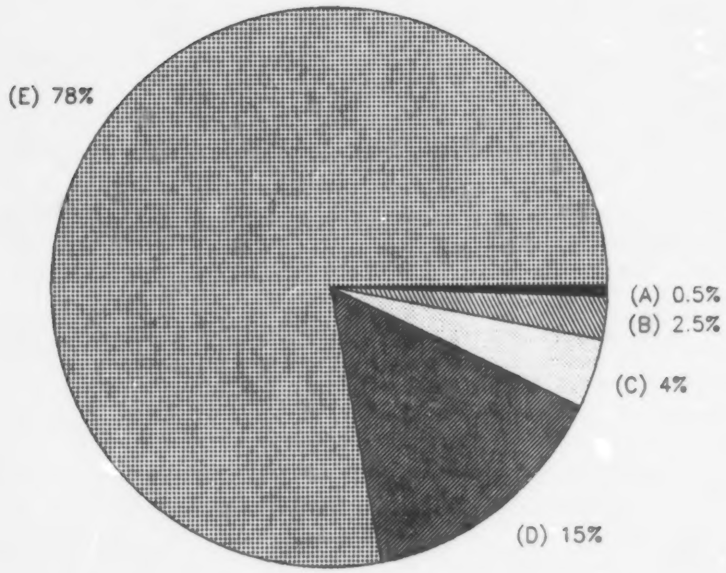
6.2 Breakdown of Cases Across the Three Levels of Sexual Assault

As with all the data sources examined in this report, the first level of sexual assault accounted for the vast majority of cases. The breakdown of the three levels was: Sexual Assault I: 530 cases (90 per cent); Sexual Assault II: 51 cases (nine per cent) and Sexual Assault III: five cases (one per cent). This breakdown closely reflects the breakdown of reported offences derived from the national database of the Canadian Centre for Justice Statistics (see Chapter 2). This provides evidence that there is nothing atypical about the British Columbia sample captured by the computerized database.

6.2.1 Sexual Assault I Dispositions

As Figure 2 shows, four out of five (78 per cent) convictions for the first level of sexual assault result in a sentence of imprisonment. The remaining 20 per cent is accounted for principally by suspended sentences (15 per cent), fines (four per cent) and discharges (three per cent).

Figure 2 **Sexual Assault I Dispositions (British Columbia, 1984 - 1986)**



A= Absolute Discharge D= Suspended
B= Conditional Discharge E= Imprisonment
C= Fine

The incarceration rate for sexual offenders as revealed by this database is higher than found in the other data sources examined in this study. This suggests that sexual assault is punished more severely in British Columbia than in other provinces across Canada. And, in fact, this interpretation is sustained by an examination of sentences appearing in law reports (see Rowley, 1989).

6.2.2 Relative Frequency of Different Sentence Lengths

Since imprisonment was the primary sanction in the vast majority of cases, it is worth knowing more about the length of custody to which offenders are being sentenced. The maximum penalty for this offence is 10 years imprisonment, although the maximum penalty is seldom imposed for sexual assault or any other offence in the Criminal Code. Figure 3 presents a histogram of the sentence lengths imposed for the first level of sexual assault.

From this figure, it can be seen that the majority of sentences are between one and five years. The median (the value that divides the distribution; one-half the sentences are longer, one-half are shorter) is 16 months. Only 14 per cent are under three months and only six per cent are between five and 10 years. For most offenders, sexual assault then is an offence that results in a sentence of imprisonment for a substantial term (relative to other offences in the Criminal Code).

6.2.3 Sexual Assault II and III

Since there were so few cases at the two more serious levels of sexual assault (51 level II and 5 level III cases), for the purposes of the following discussion they have been aggregated. A pie chart of dispositions is not presented because 99 per cent of convictions resulted in a sentence of imprisonment. As one would expect, given offences with maximum penalties of 14 years and life imprisonment respectively, most offenders convicted of these crimes become long-term inmates. Over one-quarter are sentenced to between five and 25 years. The modal (the most frequent) sentence is between two and five years (accounting for 53 per cent of cases). The breakdown of sentence lengths can be seen in Figure 4. The median sentence for these levels of sexual assault is 45 months.

Figure 3 **Imprisonment Lengths, Sexual Assault I (British Columbia, 1984 - 1986)**

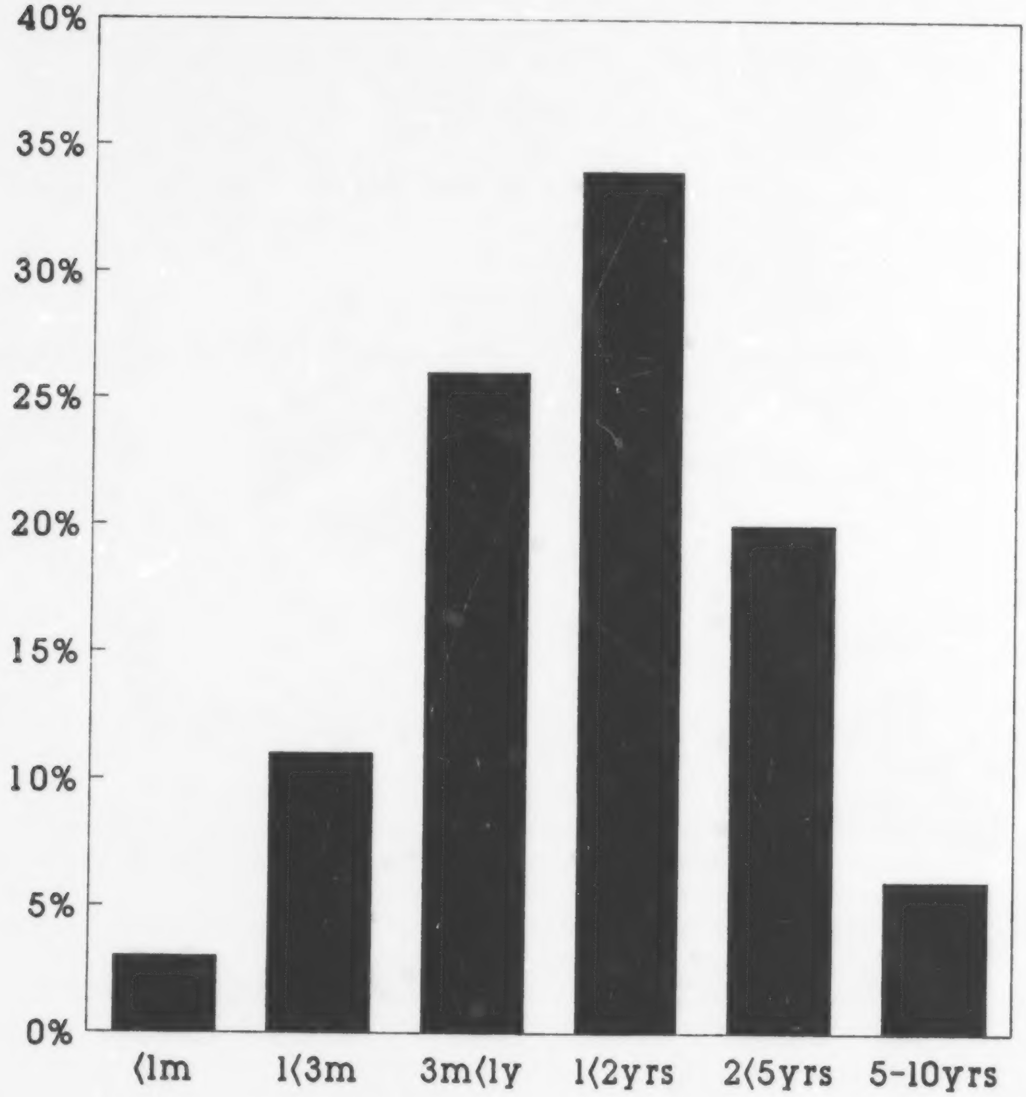
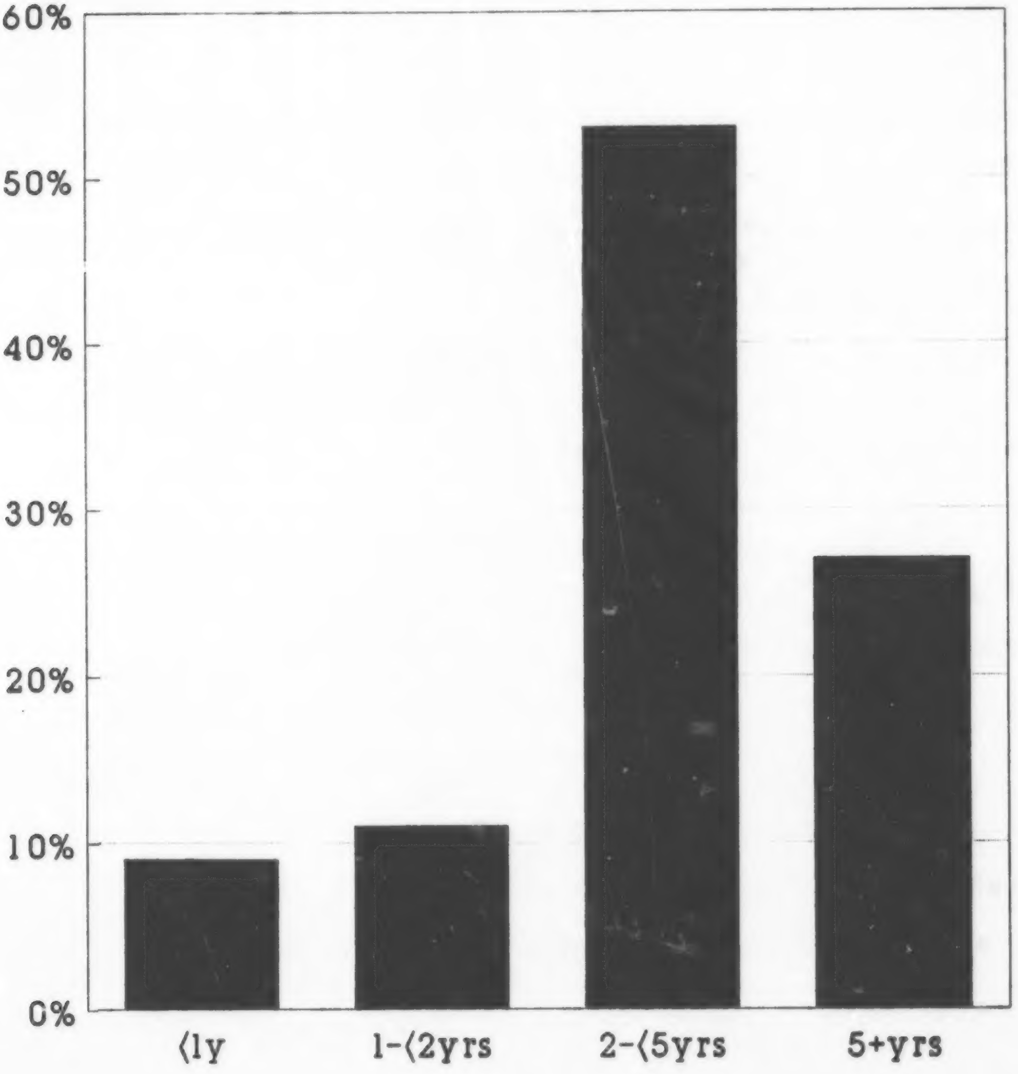


Figure 4 **Sentence Lengths, Sexual Assault II and III (British Columbia 1984 - 1986)**



6.3 Comparison between Sexual Assault I and Sexual Assault II and III

Table 4 compares dispositions imposed for the different levels of sexual assault (once again levels II and III have been aggregated).

Finally, Table 5 presents a breakdown of dispositions for all three levels combined. Figure 5 provides a pie chart of the same information.

Table 4 Dispositions for Sexual Assault, (British Columbia, 1984 - 1986)[1]

	Category	
	Sexual Assault I[2]	**Sexual Assault II/III[3]**
Dispositions		
Discharge[4]	3	0
Suspended Sentence	15	0
Fine	4	0
Imprisonment	78	100
Total	100%[5]	100%

Notes to Table:

[1] Source: Sentencing Database, Computers and the Law Project

[2] N=530

[3] N=56

[4] Includes Conditional and Absolute discharges

[5] Percentages rounded.

Table 5 Dispositions for Sexual Assault (II and III Aggregated), (British Columbia, 1984-1986)[1]

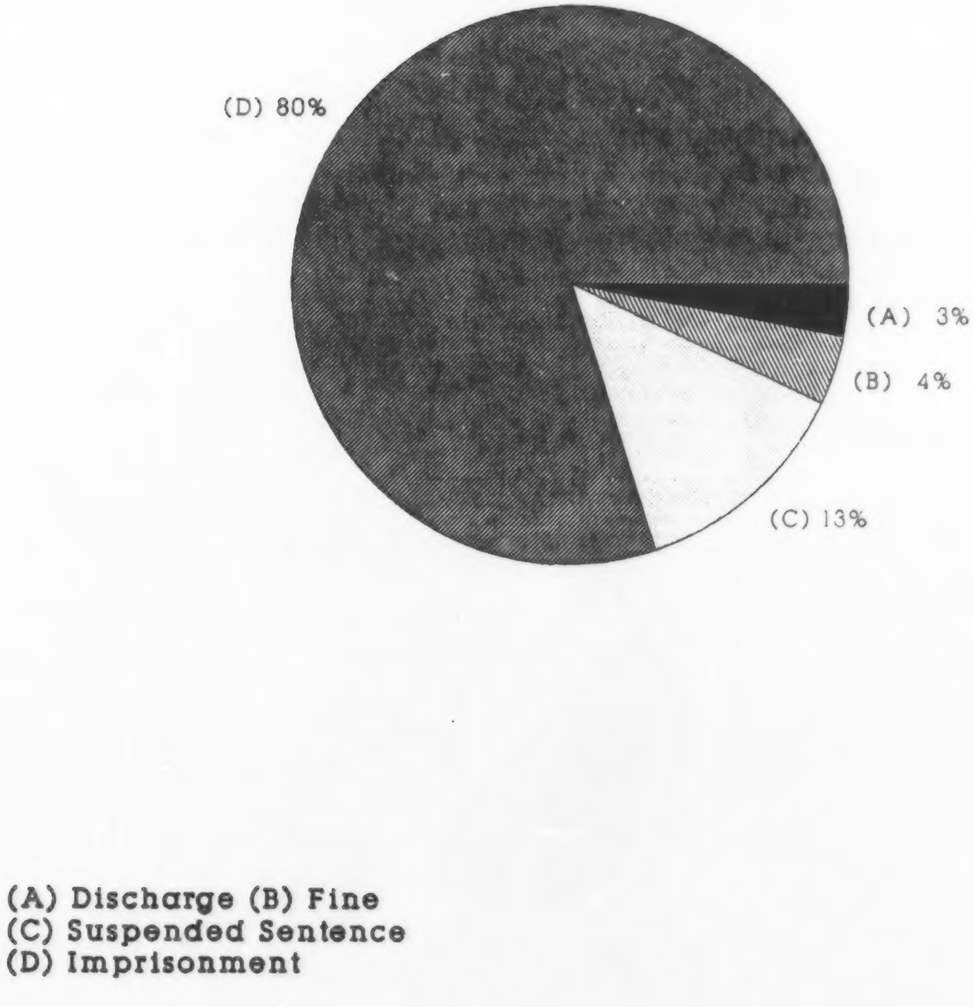
Disposition	% of Total
Discharge[2]	3
Suspended Sentence	13
Fine	4
Imprisonment	80
	100%

Notes to Table:

[1] Source: Sentencing Database, Computers and the Law Project

[2] Includes conditional and absolute discharges

Figure 5 Dispositions for All Levels of Sexual Assault (British Columbia, 1984 - 1986)



6.4 Sexual Assault in Context: Comparisons with Other Offences

6.4.1 Ordinal Proportionality

Sentences can be viewed as being too lenient from a number of perspectives. First of all, sexual assault sentences can be too lenient **relative to other crimes**. In this respect, they would violate the principle that Andrew von Hirsch refers to as **ordinal proportionality**:

> The issue of ordinal magnitudes concerns how a crime should be punished compared to similar criminal acts, and compared to other crimes of a more or less serious nature (Von Hirsch, 1985; p. 40).

This appears to be the kind of proportionality that people have in mind when they assert that sentences for sexual assault are too lenient. In their highly-influential book Rape: The Price of Coercive Sexuality, Clark and Lewis deal briefly with sentencing trends for rape. They note that:

> These figures do not support the claim that rape is treated as a serious crime in our society. In fact, lengths of sentence for rape are comparable with sentences for robbery (Clark and Lewis, 1977; p. 57).

This suggests the absence of ordinal proportionality; sentences for rape should exceed, in severity, sentences for robbery since the former is a more serious crime.

6.4.2 Cardinal Proportionality

The second kind of proportionality is known as **cardinal proportionality**. This refers to the question of whether the absolute severity of any given penalty is appropriate. What should the limits of a penalty schedule be, within which one locates all crimes of varying seriousness? Clearly this question is harder to resolve. It is easier to determine (or to reach agreement, as the problem is presumably an exercise in consensus) whether sexual assault should be punished more severely than common assault, than it is to determine what the actual penalty for either offence should be. Von Hirsch amplifies the point:

> Once one grades penalties according to the comparative seriousness of crimes, the scale as a whole still needs to be anchored. This issue, of anchoring the penalty scale by fixing the absolute severity

> levels for at least some crimes, is the issue of cardinal magnitude. It is here that desert can play only a limiting, not a determining role.
>
> The intuitive reason why this is so is the greater difficulty of making cardinal desert judgements. Suppose one is trying to find the appropriate, deserved penalty for the crime of burglary. If one has already decided the penalties for some other crimes, then one can locate the burglary penalty by making comparative judgements: how much worse or more venial is burglary than those other crimes? But such judgements require a starting point, and the issue of cardinal magnitude deals with finding that starting point. There seems to be no crime for which one can readily perceive a specific quantum of punishment as the uniquely deserved one (von Hirsch, 1985; p. 43).

Empirical data cannot speak to the issue of cardinal proportionality, but they can address ordinal proportionality: the sentences for one crime (sexual assault) can be compared to the sentences for other crimes to see if the principle of proportionality is followed. In this regard the Computers and the Law sentencing database can prove most useful.

As already noted there are three tiers of assault, each with a different maximum penalty. Common assault (Criminal Code s. 266) is a hybrid offence carrying a maximum penalty of five years if proceeded with by way of indictment, and six months if punishable on summary conviction. Assault with a weapon or causing bodily harm (s. 267) is an indictable offence; the maximum penalty is ten years imprisonment. Finally, the most serious level, aggravated assault (s. 268), is an indictable offence carrying a maximum penalty of 14 years imprisonment. (There are also two other related assault sections: unlawfully causing bodily harm (s. 269) and assaulting a police officer (s. 270), but these will not be dealt with in this comparison with sexual assault.

6.4.3 Comparison Between Sexual and Nonsexual Assault

Table 6 compares the patterns of dispositions for the three levels of each category of crime sexual and nonsexual assault.

As expected, given the greater seriousness of sexual assault (and the accordingly higher maximum penalty -- 10 years compared to five), this offence is punished more severely than the first level of assault; 78 per cent of convictions for sexual assault in this database resulted in sentences of imprisonment, compared to only 22 per cent of cases of assault. The first level of sexual assault

Table 6 Comparison of Dispositions for Sexual and Nonsexual Assault[1]

	Disposition				
	Imprisonment	Fine	Susp. Sent.	Discharge	
Offence					
Assault I	22	34	25	18	100%
Sexual Assault I	78	4	15	3	100%
Assault II & III[2]	63	10	22	5	100%
Sex. Assault II & III[2]	100	-	-	-	100%

Notes to Table:

[1] Source: Sentencing Database, Computers and Law Project

[2] Both levels combined

results in harsher penalties than convictions for assault with a weapon or aggravated assault, that combine for an average incarceration rate of 63 per cent.

Figure 6 contains two pie charts; one presents a picture of sentences for sexual assault (all three levels combined) while the second shows the pattern of dispositions for nonsexual assault, all levels combined. The sentencing patterns for the two categories of crime are quite distinct: the vast majority of convictions for sexual assault resulted in a term of custody, whereas only one-third of offenders convicted of assault received custodial dispositions. Moreover, although these data do not provide insight into the nature of the term of imprisonment, other research suggests it is likely that relative to sexual assault, a greater proportion of sentences for assault are intermittent, to be served on weekends.

6.4.4 Comparison of Sentence Lengths

Figure 7 presents a comparison of sentence lengths for two offences: sexual assault, and assault with a weapon or causing bodily harm. These two offences were chosen because they share a common maximum penalty: 10 years imprisonment. As can be seen by the figure, sentence lengths for sexual assault are longer: almost two-thirds of carceral sentences for sexual assault are over one year in duration, compared to a quarter of assault cases. In a similar fashion, one-quarter of sentences of imprisonment for sexual assault are over two years, compared to six per cent of custodial terms for assault with a weapon or causing bodily harm.

In short, consistent with the principle of ordinal proportionality, the sexual assault offences are punished more severely than the less serious offences of assault, assault causing bodily harm and aggravated assault. These data relate only to the province of British Columbia.

6.4.5 Comparison Between Sexual Assault and Other Offences

Table 7 provides a rank-ordering of 11 offences in terms of the percentage of sentences consisting of a period of imprisonment. It also provides the maximum penalties prescribed for each offence according to the Criminal Code. The list is headed by the two more serious levels of sexual assault, that is, aggravated sexual assault and sexual assault with a weapon. These offences are followed by manslaughter which resulted in incarceration in 94 per cent of cases. The utility of a table of this nature is that it permits evaluations of the degree of ordinal proportionality reflected in judicial practice: Are the more serious offences treated more severely than offences of lesser seriousness?

(This report does not present data comparing the sentencing of sexual assault in Canada with other countries due to the incompatibility of definitions of sexual crimes).

Figure 6 **All Levels of Sexual Assault vs. Nonsexual Assault: Dispositions**

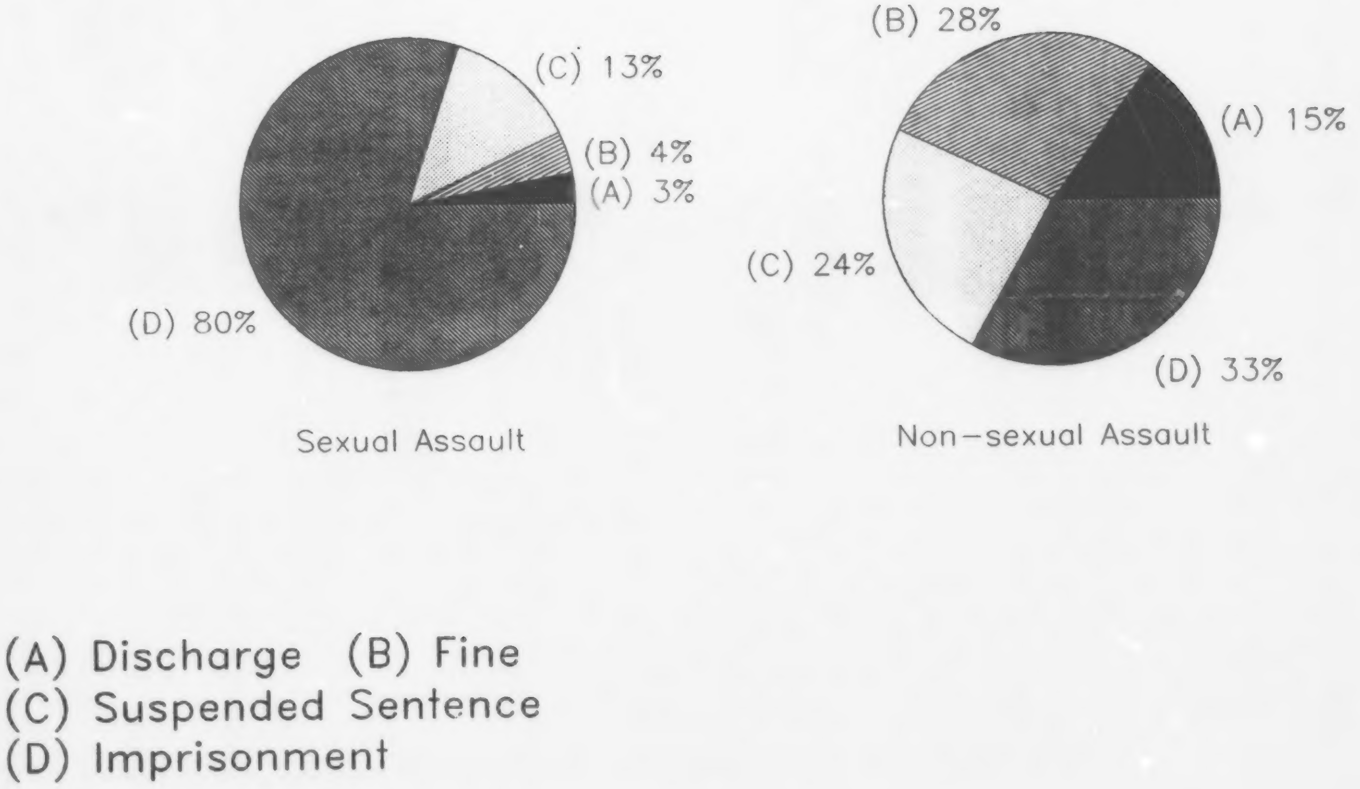


Figure 7 **Comparison of Sentence Lengths: Sexual Assault vs. Assault with a Weapon**

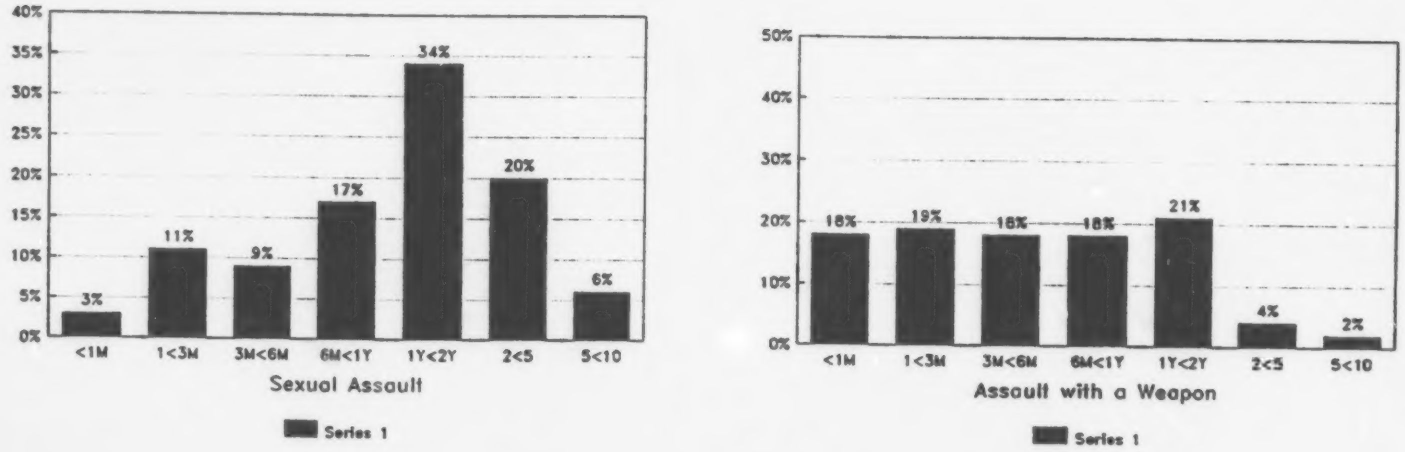


Table 7 **Rank Order of Incarceration Rates for Selected Offences**
Source: Computers and Law Database, British Columbia (1986 - 1989)

Offence	Maximum Penalty	% Incarcerated
Aggravated Sexual Assault/ Sexual Assault with a weapon[1]	Life Imprisonment/14 years	99
Manslaughter	Life Imprisonment	94
Robbery	Life Imprisonment	91
Attempt Murder	Life Imprisonment	87
Criminal Negligence Causing Death	Life Imprisonment	87
Sexual Assault	10 years	78
Break and Enter[2]	Life Imprisonment/14 years	76
Aggravated Assault/ Assault with a weapon or causing bodily harm[3]	14 years/ 10 years	63
Assault	5 years	22

[1] Both levels combined; maximum penalty for aggravated sexual assault is life; for sexual assault with a weapon or causing bodily harm it is 14 years.

[2] Both private dwelling and business premises combined. The maximum penalty for the former is life imprisonment, and 14 years for the latter.

[3] Both levels combined. The maximum penalty for aggravated assault is 14 years, ten years for assault with a weapon, or causing bodily harm.

7.0 EARLIER SENTENCING DATA

The Department of Justice Canada recently commissioned two independent special studies of sentencing practices and trends in Canada. One was a follow-up to an earlier study published in 1983 (Hann, Moyer, Billingsley and Canfield, 1983). It was part of the research program in sentencing in the Department of Justice Canada and was released in 1987 (Hann and Kopelman, 1987). The second study was conducted in 1988; the reports are due to be published early in 1990 (Hann and Kopelman, 1990). While these data are not as recent as the statistics presented in the preceding chapter, they have two advantages. First, they include more than a single province, and second they permit analysis of the amount of unwarranted disparity across several jurisdictions. A full description of the databases described here can be obtained from the original publications from which these data are drawn.

7.1 The Correctional Sentences Project: 1987

This was not a general survey of all sentences, but a summary of correctional sentences. That is, sentences of custody (intermittent or continuous); admissions to custody for fine default and probation admissions. While this project does not permit evaluations of community-based sanctions, for the sexual offences this is less important a constraint than if the focus was upon a less serious offence such as fraud. This information was obtained from every provincial, territorial and federal correctional jurisdiction in Canada during the fiscal year 1984 - 1985.

As Hann and Kopelman point out in their reports, the reader should not assume that sentencing information is uniformly gathered and recorded by all correctional authorities across the country. For example, the data from one jurisdiction (e.g., Saskatchewan) do not allow one to distinguish between s. 246 (assaulting a peace officer) and the three types of sexual assault, s. 246.1, 246.2, 246.3 (now sections 271-273). Where ambiguities exist, the data have not been included in the present examination of sentencing in sexual assault cases.

Combining all levels of sexual assault, sentences of custody represented 60 per cent of the sample, with the remaining 40 per cent falling into the category of probation. Table 8 presents the data for sentences of imprisonment, specifically the 90th percentile sentences of incarceration. (See above for a description of the 90th percentile and the median.) This statistic excludes other kind of sentences such as fines. **However, it is clear from several sources that most sentences for sexual assault include of a period of imprisonment.**

Data from another source reveals a similar incarceration rate. Nuttall (1988) examined cases appearing in Toronto for a two year period (1985 - 1987). The incarceration rate was 58 per cent (Nuttall, 1988; p. 117).

Several trends are apparent from this table. From the outset, it should be borne in mind that for certain jurisdictions, the number of "correctional" sentences for the more serious levels of sexual assault can be quite small; although all convictions for Sexual Assault III may result in custody, aggravated sexual assault is a very low frequency offence. This may explain certain anomalies. For example, the 90th percentile sentence for simple sexual assault in Manitoba is between 43 months and four years. By comparison, the same statistic for aggravated sexual assault is lower, not higher. There were only four sentences imposed for sexual assault that entered the correctional records for the province of Manitoba during the year studied. The 90th percentile in this case reflects what was probably an unusual case. Clearly then, we should be far less confident of making inferences, on the basis of these data about sentences imposed for convictions at the higher levels of sexual assault. For the present then, let us restrict our attention to sentences arising from convictions for the first (least serious) level of sexual assault.

7.1.1 Cross-jurisdictional Disparity

It is clear that a substantial degree of cross-jurisdictional disparity exists. In British Columbia, 90 per cent of custodial sentences were less than four years. In Newfoundland, however, 90 per cent of sentences were under one year. In two other provinces, Alberta and New Brunswick, the 90th percentile was two years. There are difficulties in interpreting this to be evidence of unwarranted sentencing variation (see Roberts, 1988; 1989) and yet it confirms what has been found from a number of research perspectives: **sentences across Canada vary considerably for certain offences such as sexual assault.**

A recent article examines the median custodial sentences for various offences and presents what is known as a disparity index (DI). This index reflects the amount of variation in sentence lengths across provincial and territorial jurisdictions in this country. First, however, it is important to note that the index uses the median sentence length. The median is similar to the mean in that it represents the typical sentence. In fact, the median sentence is the sentence that divides the distribution of sentences; one-half the sentences are longer than the median, one-half are shorter. The disparity index is simply the highest (i.e., longest) median sentence divided by the lowest (i.e., the shortest) median sentence length.

Table 8 90th Percentile[1] Sentence Lengths (1984 - 1985)[2]

	Sexual Assault Level		
Level	**I**	**II**	**III**
Jurisdiction[3]			
Newfoundland	7m-1y	1y-18m	-
Nova Scotia	31m-3y	49m-5y	-
P.E.I.	49m-5y	49m-5y	-
New Brunswick	2y	-	-
Ontario	2y+	-	-
Manitoba	43m-4y	73m-7y	1y-18m
Alberta	2y	43m-4y	-
B.C.	43m-4y	85m-10y	10y-12y
NWT	31m-3y	25-30m	-
Correctional S.C.	49m-5y	85m-10y	12-14y
Total	31m-3y	6-7y	7-10y

[1] 90th percentile encompasses 90 per cent of sentences: a 90th percentile of 5 years means 90 per cent of all cases in that jurisdiction were 5 years or less.

[2] Source: Hann and Kopelman (1987)

[3] Some jurisdictions (e.g., Quebec) do not specify the level of sexual assault (e.g., I, II or III); these jurisdictions have not been included.

Thus, a disparity index of two would indicate that the longest median sentence length in a province was twice as long as the province with the lowest median. If the longest median sentence length across the country for manslaughter was Ontario, at eight years, while the lowest happened to be Alberta at four years, then the disparity index for manslaughter would be two. (In fact the DI for manslaughter was two.) Roberts (1989) presents a listing of Disparity Indexes for a number of high-frequency offences. The Disparity Index for sexual assault (all levels combined) was eight. Thus, the median sentence in the province with the longest median was eight times greater than the median sentence length for the province with the lowest (i.e., shortest median).

7.1.2 Sentencing Disparity: Case Law Research

Another source of information in the area of sentencing disparity is case law. Rowley (1989) presents an analysis of a sample of all cases appearing in the law reports for the three year period from 1985 to 1988. This database does not provide a representative sample of sentences imposed; clearly cases are reported because they are likely, for one reason or another, to be of interest to the legal community. Nevertheless, the study can shed light on the range of sentences imposed across the country.

Consistent with the empirical data presented in this chapter, the report by Rowley shows a considerable degree of variation across different provinces. In British Columbia, for example, the average custodial sentence was 4.6 years; in the Yukon the average was one year.

There are at least two reasons to expect that sexual assault would generate more sentencing variation than most other offences. First, as Loh (1980) among others have pointed out, sexual assault is a difficult offence to define, even when a more refined classification exists such as in the present legislation. Second, the high maximum penalties permit judges great latitude while providing few guidelines.

Finally, the breadth of behaviours encompassed by the sexual assault legislation raises the possibility that behaviour, or the perception of behaviour, may vary systematically from jurisdiction to jurisdiction. This may explain a degree of variance in sentencing. If there was a high proportion of more serious cases in one province (relative to another), this would obviously explain and justify a more severe pattern of sentences imposed. Not all the sentencing variation is unwarranted.

7.1.3 All Sexual Assaults Combined

Further light upon custodial terms is shed by data presented in Table 9. This table shows the median sentence and the 90th percentile sentence for all jurisdictions, but now the three categories of sexual assault have been combined.

Once again, substantial variation is evident across the country. In another table provided by Hann and Kopelman (1988; Figure 5, p. 20), the range among jurisdictions was the following. The value for the province with the lowest median sentence length was in the interval one to three months, while the highest median was in the interval one year to 18 months.

7.1.4 Other Correctional Dispositions

It will be recalled that the Correctional Sentences Project also included data on admissions to custody for fine default, and probation admissions. No data will be provided for the former, since almost no cases of sexual assault result in a fine (see Hann and Kopelman, 1987; p. 100). However, the probation statistics, while not available for all jurisdictions, reveal greater homogeneity of treatment from jurisdiction to jurisdiction. The median period of probation to which offenders convicted of one of the three levels of assault was sentenced, was the same in four of five jurisdictions studied. This should not be surprising; the cases that result in probation, while atypical, are presumably uniformly different from the average sexual assault: they are the least serious cases. As well, there is a constraint upon the length of supervision to which judges can sentence convicted offenders (three years). Once again though it must be borne in mind that these figures refer to a small number of cases.

Finally, with regard to the issue of intermittent versus continuous custody, data from Hann and Kopelman reveal that very few, approximately five per cent, of Correctional sentences, result in a period of intermittent custody.

Table 9 50th (Median) and 90th Percentile[1] Sentence Lengths[2]
(All sexual assault categories combined)

Jurisdiction	50th Percentile[3]	90th Percentile[3]
Newfoundland	3m	12m
Nova Scotia	6m	36m
P.E.I.	3m	60m
New Brunswick	12m	24m
Quebec	6m	18m
Ontario	6m	24m+
Manitoba	12m	48m
Saskatchewan	-	-
Alberta	6m	24m
B.C.	18m	48m
NWT	12m	36m
Yukon	3m	18m
Correctional Services Canada	36m	84m
TOTAL (Combined)	12m	48m

[1] Definitions: Median is the 50th percentile or the sentence in the middle of the distribution. One-half the sentences are longer, one-half shorter. The 90th percentile is the sentence that encompasses 90 per cent of cases: a 90th percentile of two years means 90 per cent of sentence lengths were two years or less.

[2] Source: Hann and Kopelman (1987)

[3] In months

Data from the Correctional Sentences Project are probably the most reliable national sentencing statistics currently available. Examination of median and 90th percentile sentence lengths reveal substantial cross-jurisdictional variation. The authors of the research reports emanating from the Correctional Sentences Project concluded:

> There seem to be relatively large inter-jurisdictional (absolute) variations in median sentences for admissions on conviction of offences such as: sexual assault-Weapon/Bodily Harm (p. 23).

The extent to which these variations can be described as evidence of unwarranted variation (disparity) remains problematic, although the research on sentencing indicates it is highly likely that variations of this magnitude are due to extra-legal factors such as the nature of the judge (e.g., Palys and Divorski, 1984). In order to know whether the variation is legal or extra-legal, we would need a great deal more information about the case, the court and other features of the sentencing environment. Such detailed research remains a priority for the Canadian criminal justice system.

7.1.5 Sentencing Disparity in Other Countries

It is important to bear in mind when discussing sentencing disparity in sexual assault sentencing that it is not an exclusively Canadian phenomenon. Concern about disparity in the United States was an important source of pressure to reform the sentencing process. In 1978, Senator Edward Kennedy introduced a special symposium on sentencing (Kennedy, 1978) with the following words:

> Sentencing in America today is a national scandal. Every day our system of sentencing breeds massive injustice. Judges are free to roam at will, dispensing ad hoc justice in ways that defy both reason and fairness. Different judges mete out widely differing sentences to similar offenders convicted of similar crimes (p. 1).

Disparity is also characteristic of sentencing trends in the United Kingdom. This was noted in a recent monograph that also drew attention to the consequences of unwarranted variation:

> It (the sentencing pattern) is so varied: from fines, to probation orders, to suspended sentences, to lengths of imprisonment from less than six months to ten years or more. A potential rapist contemplating such a variety of outcomes surely could not predict accurately what the likely cost to him would be in terms of

> conviction and imprisonment for a long time . . . Not being able to predict what he would get, he may well imagine that it would not be that serious. So encouraged, he may well go ahead and leap this final 'rational' hurdle.
>
> The legal system by its "arbitrary" sentencing practice guarantees the dramatization of the most bizarre cases, thus encouraging the 'normal' calculating rapist (Box, 1983; p. 160).

7.2 The Toronto Court Sentencing Study: 1988

The researchers gathered data on a list of offences of particular interest to the Department of Justice Canada including sexual assault. Data were derived from provincial court dockets and information, as well as from records at the district court level. Statistics are provided for the first two levels of sexual assault. Aggregating the data from the two levels of court, we find that approximately 60 per cent of Sexual Assault I convictions, and 100 per cent of level II convictions resulted in a sentence of imprisonment. Almost all the other convictions for Sexual Assault I resulted in a term of probation (fines accounted for only two per cent of cases).

7.2.1 Sentence Length and Sentence Variation

The average length of imprisonment was 14.4 months for Sexual Assault I, and 17.4 months for level II. Table 10, derived from Hann and Kopelman's report, places these average sentences of imprisonment in context. This table lists the average sentences of imprisonment recorded for a series of different offences disposed in the Toronto provincial and district courts. (Offences generating fewer than five cases have not been included in this table.)

This list is neither systematic nor comprehensive; nevertheless, it does provide useful comparisons. While the median sentence lengths appear to be shorter than comparable statistics from other databases examined in the course of this research project, convictions for sexual assault still result in sentences of imprisonment that are substantially longer than those imposed for many other serious offences. The correspondence between the seriousness of the offence and the severity of the punishment appears, on the basis of these data, to be intact.

Table 10 Median Sentences of Imprisonment: Toronto Courts (1985)[1]

Offence	Median Sentence (in months)
Sexual Assault -- weapon/threat	18
Sexual Assault I	14
Robbery	12
Aggravated Assault	12
Trafficking	12
Break and Enter	6
Criminal Negligence	5
Extortion	3
Possession Over	3
Fraud Over	3
Fail to remain	2
Assault - weapon	3
Assault	1
Assault Police Officer	1

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[1] Source: Hann and Kopelman (1990)

In terms of sentencing variation, the first level of sexual assault was one of the offences that generated wide variation (see Hann and Kopelman, 1990; p. 77-78). Thus a range of 18 months or more was required to encompass the middle 50 per cent of custodial sentences. Moreover, when examining the data for lengths of terms of probation, the researchers found that both levels of sexual assault generated substantial variation.

Finally, the Toronto study also generated data on the frequency of intermittent sentences. In the case of sexual assault, intermittent terms were imposed in 18 per cent of cases. How does this compare with other offences? Hann and Kopelman note: "intermittent sentences were far less frequently given (i.e., in less than 25 per cent of the cases) for any of the assault-related . . . offences" (p. 78).

8.0 CONCLUSION

This report has examined recent sentencing statistics in Canada for the three levels of the offence of sexual assault. The final chapter will not attempt to summarize the findings of this survey of the empirical findings in the area of sexual assault sentencing. The reader is referred, for this purpose, to the summary of principal findings preceding Chapter 1. This last chapter will raise some residual issues relevant to sentencing for the crimes of sexual assault.

8.1 Incarceration Rate for Sexual Assault I

First, however, a summary table is presented of sentencing data addressing perhaps the most critical issue; the relative severity of sentences imposed for the crime of sexual assault. Table 11 summarizes the incarceration rates for Sexual Assault I derived from the major databases examined in the course of this study of sentencing practices. (Of course, the incarceration rate is only one index of the severity of punishments. Until more sophisticated national data on sentencing patterns become available, it will have to serve as a way of comparing sentencing patterns across different offences.) These incarceration rates, in light of comparisons with the incarceration rates for other serious crimes of violence, suggest that in general, offenders convicted of sexual assault are not treated with great leniency by the courts. This is not to say that lenient sentences do not occur. On the contrary, they clearly do occur, and several examples can be cited. But the popular view that most sexual assaults are not punished severely (relative to other offences) appears to be in part at least a misperception, founded upon media coverage of cases that resulted in atypically lenient sentences being imposed.

It has not been possible for this study to provide the answers to several other critical questions in the area. For example, do the maxima or the sentences actually imposed serve the purposes for which they are handed down? Do the relatively high maxima inhibit convictions (as has been suggested both prior to and since the introduction of the reform legislation). It was not possible to know the relative impact, upon the quantum of punishment imposed, of varying aggravating and mitigating factors. Research by the Metropolitan Toronto Action Committee on Public Violence Against Women and Children (METRAC) has demonstrated that judges sometimes cite inappropriate factors in mitigation of sentence. And yet there is no way of knowing the extent of such practices, nor the quantitative effect of such mitigating factors on dispositions imposed across the country.

Table 11 Incarceration Rates for Sexual Assault I[1] across Different Databases

Source	Date	Incarceration Rate
Computers and Law[2]	1984-1986	78%
Toronto Courts[3]	1988	60%
Bill C-127 Evaluations[4]	1983-1985	55%
Sentencing Commission[5]	1983-1984	66%
Corr. Sentences Project[6]	1984-1985	60%

Notes to Table:

[1] s. 271 (sexual assault)

[2] British Columbia data only; Computers and the Law Project (see Chapter 6)

[3] Source: Hann and Kopelman, 1988 (see Chapter 7)

[4] Source: Department of Justice Canada Bill C-127 evaluations - see Chapter 5)

[5] Source: Canadian Sentencing Commission, 1987 - see Chapter 5)

[6] Source: Hann and Kopelman, 1987 - see Chapter 7)

Questions of this kind can only be addressed by the collection of a rich sentencing database which would include a great deal of information about the circumstances of the offence and the characteristics of the offender.

It is clear that the first level of sexual assault is a very broad offence encompassing a wide variety of assaults. This may in part be responsible for the wide range of sentences imposed. The critical question, however, is whether the variability is excessive, and whether the protean interpretation of the sexual assault law across the country has resulted in unwarranted disparity. The limited data presented in this report indicate variability in sexual assault sentencing exceeds the variability associated with most other offences in the Criminal Code. The Adult Criminal Court Survey of the Canadian Centre for Justice Statistics, when operational, should provide valuable information upon sentencing variation across the country.

8.2 Sentencing Reform and Sentencing Guidelines

Discussion of sentencing variability inevitably generates discussion of the necessity for sentencing guidelines. The perception of excessive leniency is also relevant to this discussion. The existence of egregiously lenient sentences and the application by judges of inappropriate mitigating and aggravating factors can only strengthen the argument for sentencing reform. It is important first to consider individual sentences in the context of general sentencing trends. If sentences for sexual assault are generally too lenient, then appellate review will be a laboriously inefficient way of changing sentencing practice. If the lenient sentences reported by the news media are statistical anomalies, then appellate review may suffice. As a means to alter policy, however, appellate review is less than optimal (see discussion in Brodeur, 1989).

Recent legal research (Young, 1988) has revealed the limitations of appellate review in this area. The author of that work concluded:

> There is general agreement that the criminal justice system has failed to remedy manifest inequities in the sentencing process. Admittedly, a solution is not beyond the institutional competence of the judiciary; they possess the requisite expertise and familiarity with the issues to enable them to develop coherent and consistent guidelines. In the past decade, however, the appellate courts have done little to rationalize the process. I believe that this paper clearly shows that the law of sentencing is impoverished, and the legislature can no longer passively sit back and avoid involvement in

> the belief that the appellate courts are actively working to reduce sentence disparity (Young, 1988; p. 98-99).

If sentencing trends for the offences of sexual assault are out of step with contemporary norms, then some form of guideline system may be useful. The data presented in this report suggest that a substantial degree of variation in sentencing patterns exists across the country. Sentencing guidelines of some kind would serve several functions; they would render sentences imposed across the country more uniform, would permit a reevaluation of the level of severity of sanctions imposed, and would provide consistent guidance to sentencing judges as to the appropriate mitigating and aggravating factors to be considered. As well, they would make sentencing patterns more a question of public policy. At the present the evolution of sentencing trends has taken place outside the forum of public scrutiny.

One of the problems with the reform legislation is that it fails to define the offence of Sexual Assault I. This means that interpretation of the offence is left entirely to judges, whose views of the nature and severity of sexual aggression may differ from those held by the community. Sentencing guidelines would offer one solution to this problem.

Both the Canadian Sentencing Commission (1987) and the Daubney Committee (1988) endorsed the adoption of a sentencing guideline system, the difference between the two being that the Commission favoured a presumptive scheme while the Committee endorsed the notion of guidelines that (initially at least) would be only advisory in nature. Sentencing guidelines would, in all probability be of assistance to judges who are sentencing offenders convicted of sexual assault.

8.3 Research Priorities

8.3.1 The Judiciary

Two critical populations would appear to have been overlooked in the research compiled since 1983. Judges are perhaps the most critical actors in the sentencing process; it would be worth knowing the reactions of the judiciary to the new offences of sexual assault. Do judges feel that the broad offence of Sexual Assault I is one for which they could use greater guidance? In this regard, evaluations of the two experimental sentencing databases created by Professors Doob and Hogarth should prove instructive. They will provide us with an idea of the offences for which judges are most likely to turn to the systems for additional information. It seems probable that the first level of sexual assault, in which so much is encompassed, and for which so little guidance is provided, is an offence for which judges are likely to seek the data provided in a computerized information system. All this suggests that a survey of a representative sample of members of Canada's judiciary would generate invaluable information.

8.3.2 The Public and the News Media

The second constituency that appears to have been overlooked is the general public. While the Department of Justice Canada launched a brief but large-scale campaign to educate the public about the new offences of sexual assault, it is unclear what impact this has had. As stated in the New Brunswick evaluation report: "We do not know what is the level of awareness in the public generally about Bill C-127" (J. and J. Research Associates, 1988; p. 105). Data presented in Chapter 2 on the incidence of sexual assault reports made to the police suggest that victims are aware that the criminal justice system now responds more constructively to the victims of sexual violence, but the larger public, exposed to news media reports that still refer to rape, appear to have little or no idea of the 1983 legislation.

It is not only the media who perpetuate the use of the term rape. It is clear that the phrase sexual assault has yet to supplant the word rape in either public documents or casual conversation. The international crime survey, referred to earlier (van Dijk et. al 1989) was carried out in 1988 and 1989. The survey asked respondents to employ the old terminology to classify acts of sexual aggression. Presumably the researchers felt that the new classification would prove meaningless to members of the public. A second illustration of this phenomenon is provided by a province-wide awareness campaign conducted at Ontario universities which also adheres to the term rape. The legal classification may have changed, but it is clear that the language remains the same.

A priority for the Public Legal Education initiative would appear to be a nation-wide survey on public knowledge of the sexual assault laws. (The Environics survey referred to in Chapter 3 is a first step in this direction.) It is important that the public understands that sexual assault is not simply rape renamed. Otherwise, when the public reads or hears about an offence of sexual assault it is likely to assume the specific act was what was formerly classified as rape. And, as we have seen, Sexual Assault I includes more than simply the incidents previously classified as rape.

The Bill C-127 evaluation research commissioned by the Department of Justice Canada makes it clear that the offence of sexual assault encompasses a wide range of assaultive behaviours. The public's difficulty in understanding the nature of the new offences was noted by judges interviewed in the Manitoba site study:

> Several judges stated that as a result of this widening [i.e., sexual assault is a wider offence than rape], the public is now confused about sexual offences. While most people know what rape is, few know what is involved in sexual assault, and since the majority of sexual assaults do not constitute rape, those who equate the former with the latter may have an inaccurate perception of the type of offences which occur (University of Manitoba Research Limited, 1988a; p. 120-121).

In the context of legal education, it is important to also include criminal justice professionals, who may not have fully assimilated the reforms introduced in 1983. Once again we turn to the Bill C-127 evaluations, New Brunswick on this occasion:

> Over the course of this project, all members of the research team have, on several occasions, been required to explain to colleagues interested in the research we were doing not only that there had been changes in the legislation but also what those changes were. It was evident that even within this generally informed group... there is little awareness of even such a fundamental change as the conceptual shift from rape to sexual assault (J. and J. Research Associates Limited, 1988; p. 105).

One of the findings of this report is that public dissatisfaction with sentencing trends in this area is in part a consequence of ignorance of the actual severity of sentences imposed for the crime of sexual assault. It is possible that even if the public had a very accurate idea of sentencing severity, the demand for harsher sentences would still be heard. Nevertheless, at the present, it is clear that the public underestimates the severity of sentences imposed. As well, members of the public probably conceive of sexual assault in terms of the more serious crimes formerly classified as rape. Little effort is directed at the present time to conveying to the public, in a systematic manner, information about sentencing practices. The consequences of this are apparent in the results of public opinion polls (see Chapter 3). This is regrettable; the criminal justice system should take steps to better inform the public about sentencing. Also, any public education initiative will have to include the news media, from whom the public derives its information. Reporters have to be sensitized to provide more balanced and comprehensive coverage of sexual assault cases, and in particular sentencing decisions in the area of sexual assault.

In 1988, the Minister of Justice at the time announced a series of initiatives in the area of sentencing. One of these was aimed at professional education (judges and students of law). To this list of initiatives should be added one aiming to better inform representatives of the news media, and through them, the Canadian public.

8.3.3 Victims of Sexual Assaults

Finally, now would also seem to be an appropriate time to conduct a survey of victims. The Canadian Urban Victimization Surveys were not replicated; only another such survey will determine the extent to which the rise in reporting can be attributed to a change in victims' attitudes rather than some other explanation (see Chapter 2). A victimization survey would also reveal much about victims' experiences with the criminal justice system, a necessary prerequisite to making the system more responsive to victims of sexual assault. It is important to know why some victims still fail to report assaults. To the extent that their reticence is related to the criminal justice system, a survey of this kind would provide the basis for additional reforms.

The criminal justice system in Canada has recently taken steps to ensure that victims are heard to a greater degree.[7] The voice of research upon the efficacy of the victims' initiative should pay particular attention to the victims of sexual assaults. To what extent are their legitimate concerns at the stage of sentencing being addressed? Are sentencing judges receiving, prior to sentencing an offender for a sexual assault offence, adequate information about the effect of the assault upon the victim?

Criminal justice reform is a slow, cumulative process. It is neither synonymous with, nor automatically a consequence, of legislative intervention. The reforms implemented in 1983 may take several more years to effect all the changes envisaged by Parliament. Sentencing was not the primary focus of Bill C-127; nevertheless, since 1983, a great deal of concern has arisen over the sentences imposed upon offenders convicted of sexual assault. This concern -- both public and professional -- will only be allayed when the criminal justice system can provide answers to the critical questions surrounding sentencing for crimes of sexual violence.

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[7] At the federal level, Bill C-89 introduced amendments to the Criminal Code. In addition, provincial initiatives in the area also exist.

APPENDIX A

STUDENT SURVEY

Conducted in 1989 - See Chapter 3

SOCIO-LEGAL SURVEY

Thank you for participating in this small survey. It will take only five minutes of your time. We are interested in knowing about public knowledge of some aspects of the criminal justice system. Specifically, we are going to ask you a few questions about sentencing in Canada.

First we would just like to ask you a couple of questions about yourself:

1. Are you: Male **34 per cent** or Female **56 per cent**

2. Are you studying: Criminology **48 per cent** Law **52 per cent**

3. First of all, in your opinion, are sentences generally too harsh, too lenient or about right?

6 per cent	Too Harsh
29 per cent	About Right
58 per cent	Too lenient
7 per cent	No response

4. Now we would like your opinion about a specific crime: sexual assault. Are sentences for the crime of sexual assault:

0 per cent	Too Harsh
6 per cent	About Right
86 per cent	Too lenient
8 per cent	No response

5. The crime of sexual assault used to be called rape. Do you know in what year the sexual assault legislation was introduced? (If you have no idea, please just check "Don't know").

12 per cent	Correct (82/83/84)
88 per cent	Don't know

6. There are in fact three levels of sexual assault: (1) sexual assault; (2) sexual assault with a weapon, or causing bodily harm and (3) aggravated sexual assault. Sexual assault is the least serious of the three; aggravated assault the most serious. Do you know what the maximum penalties are for these three crimes?

(1) Maximum penalty for sexual assault is: 5 years

(2) Maximum penalty for sexual assault with a weapon is: 9 years

(3) Maximum penalty for aggravated sexual assault is: 14 years

7. The maximum penalty is, as you know, reserved for the most serious crimes. Now we would like to ask you about the **sentences most offenders actually serve** for the three types of sexual assault. Let's start with the offence of sexual assault, which is the least serious of the three levels of this type of crime. In your opinion, of every 100 persons convicted of sexual assault, **what** per cent **are sent to prison?**

29 per cent

8. Now considering the intermediate level, of every 100 persons convicted of sexual assault with a weapon, or causing bodily harm, **what per cent are sent to prison?**

40 per cent

9. Finally, consider the offence of aggravated sexual assault. Of every 100 persons convicted of aggravated sexual assault, **what per cent are sent to prison?**

78 per cent

10. Now we would like to ask your opinion of **what should happen** to people who are convicted of sexual assault. Once again we shall ask about all three levels of the crime.

Of every 100 persons convicted of sexual assault, **what** per cent **should be sent to prison?**

80 per cent

11. Now, of every 100 persons convicted of sexual assault with a weapon or causing bodily harm, **what per cent should be sent to prison?**

92 per cent

12. Finally, of every 100 persons convicted of aggravated sexual assault, **what per cent should be sent to prison?**

95 per cent

APPENDIX B

RESEARCH REPORTS
FROM THE
SEXUAL ASSAULT EVALUATION PROGRAM

RESEARCH REPORTS
FROM THE SEXUAL ASSAULT EVALUATION PROGRAM

Stanley, Marilyn G., The Experience of the Rape Victim with the Criminal Justice System Prior to Bill C-127, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 1*, Department of Justice Canada, Ottawa: July, 1985.

Ruebsaat, Gisela, The New Sexual Assault Offences: Emerging Legal Issues, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 2*, Department of Justice Canada, Ottawa: July, 1985.

Roberts, Julian V., Sentencing Patterns in Cases of Sexual Assault, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 3*, Department of Justice Canada, Ottawa: 1990a.

Roberts, Julian V., An Analysis of National Statistics, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 4*, Department of Justice Canada, Ottawa: 1990b.

Research Section, Department of Justice Canada, Overview, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 5*, Department of Justice Canada, Ottawa: 1990.

Rowley, Susannah W., A Review of the Sexual Assault Case Law, 1985-1988, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 6*, Department of Justice Canada, Ottawa: 1990 -- to be available Summer 1991.

Roberts, Julian V., Homicide and Sexual Assault, *Sexual Assault Legislation in Canada: An Evaluation, Report No. 7*, Department of Justice Canada, Ottawa: 1991 -- to be available Summer 1991.

Working Documents

Baril, Micheline; Bettez, Marie-Josée; Viau, Louise, Sexual Assault Before and After the 1983 Reform: An Evaluation of Practices in the Judicial District of Montreal, Quebec, Department of Justice Canada, Ottawa: November, 1988, WD1991-2a.

Ekos Research Associates Inc., Report on the Treatment of Sexual Assault Cases in Vancouver, Department of Justice Canada, Ottawa: September, 1988a, WD1991-3a.

Ekos Research Associates Inc., Report on the Impacts of the 1983 Sexual Assault Legislation in Hamilton-Wentworth, Department of Justice Canada, Ottawa: July 1988b, WD1991-4a.

J. and J. Research Associates Ltd., An Evaluation of the Sexual Assault Provisions of Bill C-127, Fredericton and Saint John, New Brunswick, Department of Justice Canada, Ottawa: November, 1988, WD1991-5a.

University of Manitoba Research Ltd., Report on the Impact of the 1983 Sexual Assault Legislation in Lethbridge, Alberta, Department of Justice Canada, Ottawa: August, 1988a, WD1991-6a.

University of Manitoba Research Ltd., Report on the Impact of the 1983 Sexual Assault Legislation in Winnipeg, Manitoba, Department of Justice Canada, Ottawa: September, 1988b, WD1991-7a.

CS/RESORS Consulting Ltd., The Impact of Legislative Change on Survivors of Sexual Assault: A Survey of Front Line Agencies, Department of Justice Canada, Ottawa: November, 1988, WD1991-8a.

APPENDIX C

ACTS OF SEXUAL AGGRESSION

ACTS OF SEXUAL AGGRESSION

The following table is a listing of sexual offences as they existed during each of three years; 1982, 1983, and 1988. This is not an attempt to accurately trace the history of proclamation, amendments, and repeal dates. Changes in offence categories between 1982 and 1983 accompanied the introduction of Bill C-127; however, not all offences that disappeared by column 3 were repealed by the 1988 proclamation of Bill C-15.

Section numbers were revised in 1985 (R.S.C. 1985, c. C-46), sometimes with a change in the wording of the offence, but not always. This is evident in the accompanying alphabetical listing of section numbers before and after 1985 for each offence category.

This table is useful for assessing national statistics and other data related to acts of sexual aggression. The second category of offences offers an interpretation of the data category "other sexual offences" defined by Statistics Canada. Over the ten year period leading up to 1988, at no time did the category "other sexual offences" exceed nine per cent of total sexual offences reported to police. In addition, reporting rates in this category demonstrate an increase comparable to reporting rates for rape/attempted rape/indecent assault; and the three levels of sexual assault.

Lastly, the table offers an opportunity to quickly assess charging alternatives for acts of sexual aggression and related offences during these three years.

SUBSTANTIVE SEXUAL OFFENCES

1982	1983	1988
Rape/Attempted rape		
Indecent assault female		
Indecent assault male		
	Sexual assault I	Sexual assault I (amended)
	Sexual assault II	Sexual assault II
	Sexual assault III	Sexual assault III
Buggery/Bestiality	Buggery/Bestiality	Bestiality
Acts of gross indecency	Acts of gross indecency	Anal intercourse
Incest	Incest	Incest
		Sexual interference under 14 years
		Invitation to sexual touching under 14 years
		Sexual Exploitation
Sexual intercourse with a female under 14 years; Sexual intercourse with a female btw. 14 and 16 years	Sexual intercourse with a female under 14 years; Sexual intercourse with a female btw. 14 and 16 years	
Sexual intercourse with feeble-minded		

1982	1983	1988
Seduction of a female btw. 16 and 18 years	Seduction of a female btw. 16 and 18 years	
Seduction under promise of marriage	Seduction under promise of marriage	
Sexual intercourse with stepdaughter or female employee	Sexual intercourse with stepdaughter or female employee	
Seduction of female passengers on vessels	Seduction of female passengers on vessels	
Parent or guardian procuring defilement	Parent or guardian procuring defilement	Parent or guardian procuring sexual activity
Householder permitting defilement	Householder permitting defilement	Householder permitting sexual activity
Abduction of female		
Abduction of female under 16 years	Abduction of person under 16 years	Abduction of person under 16 years
Abduction of child under 14 years	Abduction of person under 14 years	Abduction of person under 14 years
		Exposure to person under 14 years
Offences in relation to juvenile prostitution	Offences in relation to juvenile prostitution	Offences in relation to juvenile prostitution (amended)

SECTION NUMBERS

Abduction of female -- s. 248

Abduction of female under 16/Abduction of person under 16 -- s. 249/s. 280

Abduction of child under 14/Abduction of person under 14 -- s. 250/s. 281

Acts of gross indecency -- s. 157/s. 161

Anal intercourse -- s. 159

Attempted rape -- s. 145

Buggery and bestiality/Bestiality -- s. 155/s. 160

Householder permitting defilement/Householder permitting sexual activity -- s. 167/s. 171

Incest -- s. 150/s. 155

Indecent assault female -- s. 156

Indecent assault male -- s. 156

Invitation to sexual touching under 14 -- s. 141/s. 152

Offences in relation to juvenile prostitution -- s. 195/s. 212

Parent or guardian procuring defilement/Parent or guardian procuring sexual activity -- s. 166/s.170

Rape -- s. 143

Seduction of a female btw. 16 and 18 -- s. 151/s. 156

Seduction of female passengers on vessels -- s. 154/s. 159

Seduction under promise of marriage -- s. 152/s. 157

Sexual assault I -- s. 246.1/s. 271

Sexual assault II -- s. 246.2/s. 272

Sexual assault III -- s. 246.3/s. 273

Sexual exploitation -- s. 146/s. 153

Sexual intercourse with feeble-minded -- s. 148

Sexual intercourse with a female under 14 years; Sexual intercourse with a female btw. 14 and 16 -- s. 146/s. 153

Sexual intercourse with stepdaughter or female employee -- s. 153/s. 158

Sexual interference under 14 -- s. 140/s. 151

BIBLIOGRAPHY

Advisory Council on the Status of Women (1975) ACSW Proposals for Study in Respect of Sexual Assault Legislation. Ottawa: Advisory Council on the Status of Women.

Baril, M. (1978) Violence et repression: Myth ou Réalité? Criminologie, 12, 66-77.

Baril, M., Bettez, M., Viau, L. (1989) Les Agressions Sexuelles Avant et Apres la Reforme de 1983. Une Evaluation des Pratiques Dans le District Judiciaire de Montreal. Volume 1 de 3. Ottawa: Research Section, Department of Justice Canada.

Barrington, R. (1984) The rape law reform process in New Zealand. Criminal Law Journal, 8, 307-325.

Begin, P. (1987) Rape Law Reform in Canada: Evaluating Impact. Paper presented at the Fourth International Institute on Victimology, NATO Advanced Research Workshop, Tuscany, Italy, 9-15 August 1987.

Borgida, E. (1981) Legal Reform and Rape Laws. In: L. Bickman (ed.) Applied Social Psychology Annual. Beverly Hills: Sage.

Box, S. (1983) Power, Crime and Mystification. London: Tavistock.

Boyle, C.L.M. (1984) Sexual Assault. Toronto: The Carswell Company Limited.

Brillon, Y., Louis-Guerin, C. and Lamarche, M. (1984) Attitudes of the Canadian Public Toward Crime Policies. Montreal Centre Internationale de Criminologie Comparée.

Brodeur, J.P. (1989) Truth in Sentencing. Behavioral Sciences and the Law. 7, 25-49.

Canadian Federal-Provincial Task Force. Justice for Victims of Crime. Ottawa: Solicitor General Canada.

Canadian Centre for Justice Statistics (Statistics Canada) (1988) Canadian Crime Statistics. Ottawa: Minister of Supply and Services Canada.

Canadian Sentencing Commission (1987) Sentencing Reform: A Canadian Approach. Ottawa: Minister of Supply and Services.

Caringella-MacDonald, S. (1985) The Comparability in Sexual and Non-sexual Assault Case Treatment: Did Statute Change Meet the Objective? Crime and Delinquency, 31, 206-222.

Casper, J. and Brereton, D. (1984) Evaluating Criminal Justice Reforms. Law and Society Review, 18, 121-144.

Chappell, D. (1984) The Impact of Rape Legislation Reform: Some Comparative Trends. International Journal of Women's Studies, 7, 70-80.

Chrétien, J. (1980) Information Paper: Sexual Offences Against the Person and the Protection of Young Persons. Ottawa: Department of Justice Canada.

Clark, L.M. Lewis, D.J. (1977) Rape: The Price of Coercive Sexuality. Toronto: Women's Press.

---. (1978) A Study of Rape in Vancouver and Toronto. Toronto: Centre of Criminology, University of Criminology.

Computers and the Law (1987) Sentencing Database System, User's Guide. Vancouver: Faculty of Law, University of British Columbia.

Conway, E.R. (1987) L'agression Conjugale et l'agression sexuelle a L'ile-du-Prince Edouard: resultats d'une enquete aupres des victimes et de la police. Rapport pour specialistes. Numero 1987-24. Ottawa: Sollicitor Generale Canada, Secretariat du Ministere.

Cunliffe, I. (1984) Consent and Sexual Offences law reform in New South Wales. Criminal Law Journal, 8, 271-275.

CS/RESORS Consulting Ltd. (1988) The Impact of Legislative Change on Survivors of Sexual Assault: A survey of front-line agencies. Ottawa: Research Section, Department of Justice Canada.

Daubney Committee (1988) Taking Responsibility. The Report of the Standing Committee on Justice and Solicitor General on its Review of Sentencing, Conditional Release and Related Aspects of Corrections. Ottawa: Supply and Services Canada.

Department of Justice Canada (1983) Sexual Assault: The New Law. Ottawa: Department of Justice Canada.

--. (1988) After Sexual Assault...Your Guide to the Criminal Justice System. Ottawa: Department of Justice Canada.

Diamond, S. (1989) The Myth of Judicial Leniency in Sentencing. Behavioral Sciences and the Law, 7, 73-89.

Doob, A.N. (1985) The many realities of Crime. In: E.L. Greenspan and A.N. Doob (eds.) Perspectives in Criminal Law. Aurora, Ont.: Canada Law Book Inc.

Doob, A.N. and Park, N.W. (1987) Computerized Sentencing Information for Judges: An Aid to the Sentencing Process. Criminal Law Quarterly, 54-72.

Doob, A.N. and Roberts, J.V. (1984) Social Psychology, Social Attitudes and Attitudes towards Sentencing. Canadian Journal of Behavioural Science, 16, 269-280.

--. (1988) Public Punitiveness and Public Knowledge of the facts: Some Canadian Surveys. In: N. Walker and M. Hough (eds.) Public Attitudes to Sentencing. Aldershot: Gower.

Ekos Research Associates Inc. (1988a) Report on the Impacts of the 1983 Sexual Assault Legislation in Vancouver British Columbia. Ottawa: Research Section, Department of Justice Canada.

--. (1988b) Report on the Impacts of the 1983 Sexual Assault Legislation in Hamilton-Wentworth. Ottawa: Research Section, Department of Justice Canada.

Ellis, M. (1989) An Analysis of Sexual Offence Sentencing in the B.C. Court of Appeal. The Western Workshop.

Environics Research Group (1989) The Focus Canada Report. Toronto: Environmental Research Group Limited.

Estrich, S. (1987) Real Rape. Cambridge, Massachusetts: Harvard University Press.

Feldman-Summers, S. and Ashworth, C. (1981) Factors related to intentions to report a rape. Journal of Social Issues, 37: 53-70.

Galvin, J. and Polk, K. (1983) Attrition in case processing: Is rape unique? Journal of Research in Crime and Delinquency.

Graber, D.A. (1980) Crime News and the Public, New York: Praeger.

Gunn, R. and Minch, C. (1988) Sexual Assault: The Dilemma of Disclosure, The Question of Conviction, Winnipeg: University of Manitoba Press.

Hann, R.G. (1983) Sentencing Practices and Trends in Canada Ottawa: Research and Statistics Section, Department of Justice Canada.

Hann, R.G. and Harman, W. (1986) Initial Assessment of Potential Applications of FPS/CPIC Data Base to Meet Statistical Requirements of the Department of Justice (Canada) Ottawa: Research Section, Department of Justice Canada.

Hann, R.G. and Kopelman, F. (1987) Assault: Custodial and Probation Sentences: 1984/85. A report of the Correctional Sentences Project). Ottawa: Programs and Research Section, Department of Justice Canada.

--. (1990, forthcoming) Cases Sentenced in Toronto Courts: Research Report. Ottawa: Research Section, Department of Justice Canada.

Hnatyshyn, R. (1988) An Agenda for Reform of Sentencing. Speech to the Canadian Bar Association Annual Meeting, Montreal.

J. and J. Research Associates (1988) An Evaluation of the Sexual Assault Provisions of Bill C-127 Fredericton and Saint John, New Brunswick. Report to the Research Section, Department of Justice Canada.

House of Commons (1988) Minutes of Proceedings and Evidence of the Standing Committee on Justice and Solicitor General. Issue #46. Ottawa: Supply and Services Canada.

Howard League (1985) The Report of Howard League Working Party. Unlawful Sex. Offences, Victims and Offender in the Criminal Justice System of England and Wales. London: Waterlow Publishers.

Kennedy, E.M. (1978) Symposium on Sentencing Part I (Introduction) Hofstra Law Review, 7, 1-9.

Kinnon, D. (1981) Report on Sexual Assault in Canada. Ottawa: Canadian Advisory Council on the Status of Women.

Lafree, G. (1982) Variables affecting guilty pleas and convictions in rape cases: Toward a social theory of rape processing. Social Forces. S8, 833-850.

--. (1989) Rape and Criminal Justice. The Social Construction of Sexual Assault. Belmont, Calif.: Wadsworth.

Law Reform Commission of Canada (1978) Sexual Offences (Working Paper #22) Ottawa: Department of Supply and Services Canada.

LaPrairie, C. (1989) The Role of Sentencing in the Over-representation of aboriginal people in Correctional Institutions. Ottawa: Research Section, Department of Justice Canada.

Lizotte, A. (1985) The Uniqueness of Rape: Reporting Assaultive Violence to the Police. Crime and Delinquency, 31, 169-190.

Loftin, C., Heumann, M. and McDowall, D. (1983) Mandatory Sentencing and Firearms Violence: Evaluating an Alternative to Gun Control. Laws and Society Review, 17, 287-318.

Loh, W.D. (1980) The Impact of Common Law and Reform Rape Statutes on Prosecution: An Empirical Study. Washington Law Review, 55, 542-652.

Loh, W.D. (1981) Q: What has reform of rape legislation wrought? A: Truth in criminal labelling. Journal of Social Issues, 37: 28-52.

MacGuigan, M. (1983) Sexual Offences Bill Proclaimed Law. Ottawa: Department of Justice Canada.

Marsh, J.C., Geist, A. and Caplan, N. (1982) Rape and The Limits of Law Reform. Boston, Massachusetts: Auburn House Publishing Company.

Marshall, P. (1988) Sexual Assault, The Charter and Sentencing Reform. Criminal Reports, 63, 216-235.

Nisbett, R.E. and Ross, L. (1980) Human Inference: Strategies and Shortcomings of Social Judgement. New Jersey: Prentice Hall.

Minch, C., Linden, R. and Johnson, S. (1987) Attrition in the Processing of Rape Cases. Canadian Journal of Criminology, 29, 389-404.

Myers, M. and Lafree, G. (1982) Sexual Assault and Its Prosecution: A Comparison with Other Crimes. Journal of Criminal Law and Criminology, 73, 1282-1305.

Nuttall, S. (1989) Toronto Sexual Assault Research Study. Draft. Ottawa: Ministry of the Solicitor General Canada.

Orcutt, J. and Faison, R. (1988) Sex Role Attitude Change and Reporting of Rape Victimization 1973-1985. Sociological Quarterly, 29, 589-604.

Palys, T.S. and Divorski,S. (1986) Explaining Sentence Disparity. Canadian Journal of Criminology, 28, 347-362.

Polk, K. (1985) Rape Reform and Criminal Justice Processing. Crime and Delinquency, 31, 191-205.

Price, M. (1984) A Monitoring Project of the New Sexual Assault Legislation. Report to the Alberta Law Foundation. Calgary: Calgary Sexual Assault Foundation.

Renner, E. and Sahjpaul, S. (1986) The new sexual assault law: What has been its effect? Canadian Journal of Criminology, 28, 407-413.

Renner, K.E., Wackett, C. and Ganderton, S. (1988) The "Social" Nature of Sexual Assault. Canadian Psychology, 29, No. 2, 163-173.

Roberts, J.V. (1980) Crime in the Media: A Content Analysis of Toronto Newspapers. Toronto: Centre of Criminology, University of Toronto.

--. (1988) Empirical Research on Sentencing. Research Reports of the Canadian Sentencing Commission. Ottawa: Department of Justice Canada.

--. (1989) Is Sentencing Disparity a Problem in Canada? You be the Judge. Ottawa: Department of Criminology, University of Ottawa.

--. (1988) Public Opinion and Sentencing. Research Reports of the Canadian Sentencing Commission. Ottawa: Department of Justice Canada.

--. (1988) Sentencing in the Media: A Content Analysis of English-Language Newspapers in Canada. Research Reports of the Canadian Sentencing Commission. Ottawa: Department of Justice Canada.

Roberts, J.V. and Doob, A.N. (1989) Sentencing and Public Opinion: Taking False Shadows for True Substances. Osgoode Hall Law Journal, 27, 491-515.

Rowley, S.W. (1989) A Review of the Sexual Assault Case Law May 1985 to April 1988. Ottawa: Research Section, Department of Justice Canada.

Sahjpaul, S. and Renner, K.E. (1988) The New Sexual Assault Law: The Victim's Experience in Court. American Journal of Community Psychology, 16, No. 4, 503-513.

Smart, C. (1989) Feminism and the Power of Law. London: Routledge.

Snider, L. (1985) Legal Reform and Social Control: the Dangers of Abolishing Rape. International Journal of the Sociology of Law, 13, 337-356.

Solicitor General Canada (1984) Canadian Urban Victimization Survey. Reported and Unreported Offences. Ottawa: Department of Supply and Services Canada.

--. Federal Victims of Crime. Canadian Urban Victimization Survey Number 4. Ottawa: Department of Supply and Services Canada.

Stanley, M. (1985) The experience of the rape victim with the criminal justice system prior to Bill C-127. Ottawa: Department of Justice Canada.

Steffensmeier, D.J. (1988) The Uniqueness of Rape? Disposition and Sentencing Outcomes of Rape in Comparison to other Major Felonies. Sociology and Social Research, 72, 192-198.

Temkin, J. (1987) Rape and The Legal Process. London: Sweet & Maxwell.

University of Manitoba Research Limited (1988a) Report on the Impact of the 1983 Sexual Assault Legislation in Winnipeg, Manitoba. Ottawa: Research Section, Department of Justice Canada.

--. Report on the Impact of the 1983 Sexual Assault Legislation in Lethbridge, Alberta. Ottawa: Research Section, Department of Justice Canada.

United States Department of Justice (1987) Criminal Victimization 1987. Bureau of Justice Statistics Bulletin. Washington: Bureau of Justice Statistics.

--. (1988) Report to the Nation on Crime and Justice. Washington: Bureau of Justice Statistics.

van Dijk, J., Mayhew, P. and Killias, M. (1989) Experiences of Crime Across the World: Key Findings of the 1989 International Survey. (Draft report) The Hague: Research and Documentation Centre, Ministry of Justice.

von Hirsch, A. (1985) Past or Future Crimes: Deservedness and Dangerousness in the Sentencing of Criminals. New Brunswick, New Jersey: Rutgers University Press.

Voumvakis, S. and Ericson R. (1984) News Accounts of Attacks on Women: A Comparison of Three Toronto Newspapers. Toronto: Centre of Criminology, University of Toronto.

Watt, D. (1984) The New Offences Against the Person: The Provisions of Bill C-127. Toronto: Butterworths.

Weidner, G. and Griffitt, W. (1983) Rape: A Sexual Stigma? Journal of Personality. 51, 152-166.

Williams, K., Gibbs, J. and Erickson, M. (1980) Public Knowledge of Statutory Penalties. Pacific Sociological Review, 23, 105-127.

Williams, L. (1984) The Classic Rape: When do Victims report? Social Problems, 31: 461-467.

Williams, J.E. & Holmes, K.A. The Second Assault Rape and Public Attitudes. Westport, Connecticut: Greenwood Press.

Yarmey, A.D. (1985) Attitudes and Sentencing for Sexual Assault as a Function of Age and Sex of Subjects. Canadian Journal on Aging, 4, 20-28.

Young, A. (1988) The Role of an Appellate Court in Developing Sentencing Guidelines. Research Reports of the Canadian Sentencing Commission. Ottawa: Department of Justice Canada.

Zwarun, S. (1988) Why are Judges so Lenient in Sexual Assault Cases? Chatelaine, December.